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**9-1 General****9-1.1 Introduction**

This chapter specifies the instruments of conveyance used by the department, how they are prepared, and the standard, the special, and/or the variable language used therein. The types of instruments most commonly used are preprinted, fill-in forms. Unless otherwise specified, all instruments are prepared, signed and acknowledged in such form and manner as to make them eligible for recording with the County Auditor.

Refer to Chapter 6 for types of title or interests to be acquired and appropriate instruments of conveyance.

Refer to Chapter 8 for appropriate instruments for clearing encumbrances.

**9-1.2 Rules****9-1.2.1 Language**

- A. Preprinted forms are used whenever possible. Custom instruments are prepared following the precise wording of the same printed form only when the space available on the printed form is inadequate for compliance with this chapter.
- B. Instruments for which there is no printed model are generally custom prepared by the Region Real Estate Services Manager (RESM) on a case by case basis in compliance with the requirements of this chapter and in coordination with the Assistant Director Title and Condemnation Program.
  - 1. The language of the preprinted forms is approved by the Attorney General Division and is adhered to in comparable situations for custom conveyances.
  - 2. In circumstances for which there is no suitable/comparable state form, the state may also employ a preprinted, standard conveyance, affidavit, or other form provided by or acceptable to the title company issuing the PC.
  - 3. The Director of Real Estate Services (DRES) may accept a conveyance in the format or form prepared/required by another agency or major corporate body.
- C. The sample instruments illustrated in Chapter 13 serve as models for the instruments used in acquisitions by the state.

**9-1.2.2 Composition****9-1.2.2.1 Preprinted Forms**

- A. Filled in by typewriter, error-free. Minor, clear, and neat pen and ink revisions initialed by all the parties are acceptable.
- B. If sheets are appended, they are prepared in accordance with Sections 9-1.2.2.2 and 9-17.

**9-1.2.2.2 Custom Forms**

- A. Paper: White bond, 8½" x 11" size. Only one side of each sheet is used (reverse blank).
- B. Typewritten: Except for the description, the instrument is double-spaced. Acceptable instruments are error-free. Minor, clear, and neat pen and ink revisions initialed by all the parties are acceptable.

- C. Margins: Except for the description, margins are one (1) inch.
- D. Descriptions: The legal description is typewritten, single-spaced, and has one and one-half (1½) inch margins on both sides.
- E. Page Numbering: Each sheet including acknowledgments and exhibits is numbered, centered at the bottom of each sheet, showing both the page number and the total number of pages of the instrument: e.g., “Page 1 of 1 Page,” “Page 2 of 4 Pages.”

### **9-1.2.3 Parcel Identification**

The applicable parcel number(s) is (are) inserted on the lower right-hand corner of each sheet of an instrument; e.g., “Parcel No. 8-12345.”

## **9-2 Elements (Paragraphs)**

Unless otherwise specified and/or illustrated in this chapter, the elements of an instrument include all of the following:

- A. Function Title (see Section 9-3).
- B. Federal Aid Project Number (FA No.) (see Section 9-4).
- C. Project Number and Title (see Section 9-5).
- D. Party Clause (see Section 9-6).
- E. Consideration (see Section 9-7).
- F. Conveyance Clause (see Section 9-8).
- G. Property Description (see Section 9-9).
- H. Miscellaneous Clauses (see Section 9-10).
- I. Occupancy Date Clause (see Section 9-11).
- J. Delivery Clause (see Section 9-12).
- K. Date of Instrument (see Section 9-13).
- L. Execution (see Section 9-14).
- M. Acknowledgment (see Section 9-15).
- N. Acceptance and Approval (see Section 9-16).

## **9-3 Function Title**

- A. The title of the instrument is a clue to the function the instrument performs, e.g., Warranty Deed, Lease, Agreement, etc.
- B. The specific function of an easement, permit lease or option is also inserted in the title, e.g., Easement for Haul Road, Permit to Install Irrigation Facility, Lease for Borrow Site, Option to Purchase Lands, etc.

## **9-4 Federal Aid Project Number**

If federal participation is involved, the Federal Aid Project Number (FA No.) is inserted to the right of the function title. When a project on a federal aid route does not involve federal participation, the FA route and section are inserted and followed by a blank space enclosed by parenthesis, e.g., RF-037-2( ). When federal participation is not expected on a sundry site, the FA number is omitted. A detailed explanation of the FA number is given in Chapter 3.

## 9-5 Project Number and Title

The official project number (see Chapter 3) for which real property or property rights are being acquired is inserted at the head of every instrument to the state immediately below the Federal Aid Project Number. The project title, using the exact wording and/or abbreviations (but omitting the mile post identification) which appear on the Right of Way Plan is inserted on every instrument to the state.

## 9-6 Party Clause

### 9-6.1 General

The Party Clause identifies the parties who are making the conveyance. They are usually (but not necessarily) identified as “grantors” in deeds, easements, and permits, as “lessors” in leases, etc. The name(s) of the “grantor(s)” are generally shown so as to agree with the name(s) of such person(s) as they acquired title to the property being conveyed.

The Party Clause, e.g.,

“The Grantors, John Doe and Jane Doe, husband and wife . . .”

also answers or resolves questions of the grantor’s (1) identity, (2) marital status, (3) relationship between persons, and (4) the estate or interest held by the grantors.

### 9-6.2 Corrective Identity

If the grantor’s correct name is questioned in the PC or if the Acquisition Agent finds the PC to be inaccurate as to identity, the party clause is used in the state’s instrument to show the correct name of the grantor.

- A. If the identity as vested in the PC was correct and the identity of alternate similar names are questioned and found to be the same person, the party clause is used to clarify the identity. The correct name appears first, followed by the alternate names as follows:

1. “. . . John Doe, also appearing of record as J. Doe . . .”

- B. If the grantor’s current identity is more correctly or accurately established than by the vested name in the PC, the following examples are adapted:

1. “. . . John Olson, who acquired title as John Olsen . . .”

2. “. . . John B. Doe, who acquired title as John R. Doe . . .”

3. “. . . Mary Doe, who acquired title as Mary Jones . . .”

**Note:** This form is for a woman who has married since acquiring title.

4. “. . . Charles Martin, who acquired title as Carlos Martino . . .”

5. “. . . John Doe Company, which acquired title as John Doe Co., . . .”

6. “. . . John Doe, Inc., which acquired title as John Doe and Sons . . .”

### 9-6.3 Marital Status

- A. Because Washington is a community property state, any deed taken by either spouse of a marital community (except as provided in B. below) becomes automatically the community property of both, and the interests of spouses (and former spouses) must be acquired or eliminated. Hence, considerable importance is attached to the correctness of a statement regarding marital status in the Party Clause. The vesting in the PC is the starting point, for the title company insures the state that the named vestee can convey good title, but if the marital status of the vestee is questioned by a comment or encumbrance

or has changed since he/she acquired title, an investigation of the marital facts is required. The object is to arrive at a Party Clause which shows the currently correct names as grantors on the state's instrument (see Section 9-6.2) followed, if necessary, by (1) a statement of the currently correct marital status, and (2) if applicable, a statement clarifying the interest held.

- B. A person who acquires land while single, or as a gift or an inheritance even while married, owns the land as his/her separate estate, and the joiner of the spouse is not required, although it is good practice to secure the spouse's signature as a precautionary measure. If there should be any resistance by the spouse to signing, such signing may be waived but only after ascertaining that the couple has not entered into a Community Property Agreement. If a Community Property Agreement has been executed, but not recorded in the county in which the required real property lies, a copy should be obtained and the matter referred to the Region RESM for instructions. If a Community Property Agreement has been recorded in the county in which the required real property lies, it will (usually) be reported in the PC, and both signatures will be required.
- C. The following are some of the terms involved in marital status questions and their precise meanings. Whenever possible, the proper term should be used to identify the grantor in our right of way deeds.
  - 1. Widow (Widower) — A woman (man) whose husband (wife) had died.
  - 2. Single or Unmarried — This term includes all persons who are not now married (bachelor, spinster, widow, widower, divorced).
- D. On a great many of the titles encountered when acquiring right of way, no question of the marital status of the vestee will be raised by the title company in the PC. A simple investigation by the Acquisition Agent aimed at verifying the marital status shown in the PC will permit him (assuming the fact of verification) to phrase the Party Clause in the exact same language as the vesting. (The facts elicited in his investigation are reported in the *Diary of Right of Way Activities*, DOT Form 260-001.)
- E. Where the title company does raise a question concerning marital status (often through the use of the word "presumptively"), or where the investigation (D., above) does not verify the marital status given in the PC, the question may be resolved by considering the following typical situations:
  - 1. If the PC reads "John Jones, presumptively subject to the community interest of his wife, if married on January 16, 1936, date of acquiring title," this means that the deed to the vestee reads merely "John Jones" and does not disclose whether or not John is married.

The parties should be questioned as to their marriage date, and if it is found that they were husband and wife on "January 16, 1936," this fact should be incorporated in the party clause of the deed. It is not sufficient merely to have his present wife sign the deed. The following is a good form to use:

"John Jones and Mary Jones, husband and wife on January 16, 1936, and at all times since."

If questioning discloses that John was single on the above date, the party clause should appear as follows:

"John Jones, a single man on January 16, 1936, and Mary Jones, his wife."

If it is found that on said date, John was married to *someone other than Mary*, then the interest of that former spouse must be secured, or a determination made that it has passed properly to John. The existence of a former spouse is the most dangerous possibility of this type of vesting, and is the condition against which every precaution should be taken.

2. If the PC reads “John Jones and Mary Jones, presumptively as community property,” this means that the vesting deed ran to John Jones and Mary Jones, but failed to identify them as husband and wife. (They might be brother and sister, for instance, and each of their interests would be presumptively subject to the community interest of his or her respective spouse.)

In this case, if it is found that they are married, it is sufficient to take a deed reciting that they are husband and wife.

If it is found that they are not married to each other, the Acquisition Agent makes an investigation to determine the marital status of each person, reporting the facts found in his *Diary of Right of Way Activities* (Form RES-301), and refers the matter to the Region RESM (or his designee) for instructions.

3. Some title companies also show a title as being in “John Jones, husband of Mary Jones, presumptively as community property,” this means that the deed ran to John Jones, without disclosure of his marital status, but the title company knows from its own records that he was the husband of Mary on the date of acquiring title.

In this case, it is sufficient to accept a deed signed by John and Mary, identifying them as husband and wife in the party clause.

4. If the PC shows the title to be in Mary Jones, a widow, or Mary Jones, a spinster, and you find in contacting her that she has remarried, or married, the following is the proper form for the party clause:

“Mary Schwartz, who acquired title as Mary Jones, a widow, (or a spinster), and Albert Schwartz, her husband.” (Technically the husband need not join in the deed, since the property is the separate estate of Mary. But see B. above for the possible effect of a Community Property Agreement).

5. Combinations and/or variations of the above examples should be referred to the Region RESM for instructions. Also, see Section 8-5.5 with respect to probate in the event of the death of a vestee.

## 9-6.4 Corporate Names

### 9-6.4.1 Private Corporations

The name of the corporation, using the exact words as filed in the Office of the Secretary of State in Olympia, is shown in instruments to the state. Any variation is authorized by the Region RESM and explained in the *Encumbrance Report on the Right of Way Acquisition Transmittal*. (But see Section 9-6.2 B. if PC vesting varies from name as recorded in Office of Secretary of State.)

### 9-6.4.2 Governmental Agencies

Acquisition from political subdivisions of the state of Washington (cities, counties, etc.) should be headed as shown in the title report, e.g., “\_\_\_\_\_ County, a political subdivision of the state of Washington,” “City of \_\_\_\_\_, a municipal corporation of the state of Washington.”

### **9-6.5 Estate or Interest**

When legally empowered to execute an instrument as a fiduciary, the party clause includes the name and the capacity of the party who executes the instrument for the vested owner. A fiduciary's name appears exactly as shown in the PC and/or the court appointment. See Sections 9-6.6 to 9-6.8, below. Although an Attorney-in-Fact has fiduciary responsibilities, he has no estate or interest in the property to be conveyed; hence, the name of the principal only appears in the party clause. (See Section 9-14 as to execution by an Attorney-in-Fact.)

### **9-6.6 Trustee**

- A. If a Trustee is executing the instrument only as a fiduciary, the following examples are adapted:
  - 1. “. . . Richard Roe as Trustee for John Doe . . .”
  - 2. “. . . Richard Roe as Trustee under the will of John Doe, deceased . . .”
  - 3. “. . . The Grand National Bank as Trustee for John Doe . . .”
- B. If a Trustee is executing the instrument for himself as a vested owner and as a fiduciary, the following example is adapted:
  - 1. “. . . Richard Roe, a single man, as his separate estate (etc., see Section 9-6.3) and as Trustee for John Doe, as his separate estate . . .”

### **9-6.7 Executor/Administrator**

- A. If an Executor/Administrator is executing an instrument only as a fiduciary, the following example is adapted:
  - 1. “. . . Richard Roe as Executor (Administrator) of the Estate of John Doe, deceased . . .”
- B. If an Executor/Administrator is to execute an instrument for himself as a vested owner and as a fiduciary, the following example is adapted:
  - 1. “. . . Jane Doe, individually and as Executrix (Administrator) of the Estate of John Doe, deceased . . .”
- C. Trustees, Executors, and Administrators are also collectively referred to as Special Representative as shown in the following example:
  - 1. “. . . Richard Roe as Special Representative for the Estate of John Doe, deceased . . .”

### **9-6.8 Guardian**

- A. If a Guardian is executing an instrument only as a fiduciary, the following example is adapted:
  - 1. “. . . Jane Doe as Guardian of the Estate of John Doe, Junior, a minor (an incompetent, an insane person) . . .”
- B. If a Guardian is executing an instrument for himself as a vested owner and as a fiduciary, the following example is adapted:
  - 1. “. . . Jane Doe, individually and as Guardian of the Estate of John Doe, Junior, a minor (an incompetent, an insane person) . . .”

### 9-6.9 Tenants in Common and Joint Tenants

If the PC shows title vested in the parties as Tenants in Common (or as Joint Tenants), the following example is adapted:

1. “. . . John Doe and Ruth Roe, as Tenants in Common . . .”
2. “. . . John Doe and Jane Doe, husband and wife, as Joint Tenants . . .”

### 9-6.10 Fractional Interest

- A. If the PC shows title held by two or more persons in fractional interests, the sum of such interests is verified by the Acquisition Agent to equal 100 percent and the parties are joined on the instrument, adapting the following example:
  1. “. . . John Doe, Jane Doe, Ruth Roe and Jim Olsen, as their interests may appear . . .”
- B. If the space on the form instrument is insufficient, the party clause may be altered by:
  1. Removing (striking out with a single straight line) the word “grantor” and,
  2. Inserting instead, the following:  
“. . . The undersigned grantors, as their interests may appear . . .”

### 9-6.11 Partnerships

- A. If the PC shows title held in name of a firm which proves to be a partnership:
  1. If a Limited Partnership and evidence is available that only some of partners are authorized to convey the real property of the firm, the following is adapted:
    - a. “. . . (FIRM NAME), a Limited Partnership . . .” (See Section 9-14.3.5 for execution.)
  2. If a Limited or General Partnership and no evidence is available as to authority to convey, the following is adapted:
    - a. “. . . John Doe and Jane Doe, his wife; Richard Roe and Ruth Roe, his wife, (continuing through all the partners and their spouses), being all the partners of (FIRM NAME), a (Limited) Partnership . . .”
- B. If the PC shows title held by one or more persons who prove to be all or part of a partnership which in fact is doing business under a firm name, the following is adapted:
  1. “. . . John Doe and Jane Doe, his wife; Richard Roe and Ruth Roe, his wife; (continuing through all the partners and their spouses), partners doing business as (FIRM NAME) . . .”

### 9-6.12 Limited Liability Companies

The name of the Limited Liability Company as filed in the Office of the Secretary of State in Olympia and as shown in the written agreement. The agreement details the organization of the LLC including provisions for management. For more detailed information see RCW 25.15.

## 9-7 Consideration

### 9-7.1 Lump Sum

- A. If no money is to be paid, the language used is:
  1. “. . . Mutual Benefits . . .” (The words “the sum of” and “Dollars” on the preprinted forms are stricken.)

- B. If money is to be paid for the purchase of property or a real property interest in the lands to be acquired, the following language is used in lieu of reciting the full amount of the just compensation for the parcel:

1. “. . . Ten and No/100 (\$10.00) Dollars and other valuable considerations . . .”

**Note:** The word “Dollars” is printed on many forms at the end of a line. Hence, the parenthetical numerical amount is written in before the word “Dollars”; it normally should follow the word “Dollars” as in C. below. “Other valuable considerations” includes construction items and the like. If actual money paid is less than \$10, the dollar figure in the above example should be reduced to a number as small or smaller than the dollars paid.

- C. If money is to be paid in relation to an agreement or for a release of an interest, e.g., damages, judgment, or lease, in a secondary *Real Property Voucher*, the specific amount of the consideration is shown in words and numerals:

1. “. . . ONE THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,500.00) . . .”

### **9-7.2 Rate**

If money is to be paid periodically as in a lease, the amounts to be paid and the frequency of payments are included, adapting suitable language based on the following examples:

- A. “. . . Ten and No/100 Dollars (\$10.00) per month . . .”
- B. “. . . Ten and No/100 Dollars (\$10.00) per month together with Two Cents (\$0.02) per cubic yard of materials removed by the state of Washington and/or its assigns during each such monthly period . . .”
- C. “. . . Mutual Benefits and Six Cents (\$0.06) per cubic yard of materials removed by the state of Washington and/or its assigns, payable annually (semi-annually) . . .”
- D. “. . . On a royalty basis at the rate of \$\_\_\_\_\_ per cubic yard of material removed by the state as measured by a cross section survey of the excavated area at the completion of each contract, said royalties to be paid promptly at the completion of each such contract . . .”

## **9-8 Conveyance Clause**

### **9-8.1 General**

- A. The conveyance clause states the exact terms and conditions of conveyance. The complexity of the language varies with the function of the conveyance.
- B. A deed normally contains a simple statement to “convey and warrant,” (“Warranty Deed”) or “convey and quit claim” (Quit Claim Deed).
- C. In an “Access Rights Only” deed, the complete conveyance clause also becomes the access clause.
- D. Easements, permits, leases, options, etc., require additional conveyance language. See Chapter 13 for examples.
- E. The conveying language is followed by the name of the grantee (“the state of Washington”) and nature of the interest conveyed, e.g., “the following described real property” (in a deed); “the temporary right to use and occupy the following described real property” (in a lease or permit).

## 9-8.2 Easement

- A. An easement conveys a permanent interest in specific property rights. The interest acquired can be extinguished by merger, abandonment, or relinquishment.
- B. Form RES 324 'EASEMENT', contains the basic easement language (convey and grant) into which is inserted the language which describes only the interest which the state acquires, for example: '... construction and maintenance of a Channel Change Facility of the Cedar River...'.

## 9-8.3 Temporary Easement, Right of Entry, Permit

These documents are used to obtain the temporary use of a property for a specific purpose. The document needs to clearly state the purpose and the termination date.

### 9-8.3.1 Temporary Easement, Temporary Construction Easement

- A. Temporary easements are used when the state requires a property right of a temporary nature that involves construction activities on privately owned property. In cases where the work to be performed is not beneficial to the property owner, just compensation may be paid. A temporary easement is not revocable by the property owner and may recorded to place constructive notice of the rights the state has acquired.
- B. Form RES 325 'TEMPORARY EASEMENT' contains basic language to into which is inserted the specific language describing the reason for the temporary easement and the expiration date of the temporary easement.

### 9-8.3.2 Right of Entry

- A. A right of entry is a personal not a property right. It gives WSDOT permission to perform a service at the will of the property owner. These documents are used for some survey work, soils analysis, wetland delineation, septic or well testing, or such work usually associated with the initial scoping and design of the project. These documents can be revoked by the property owner and are only valid with the current property owner. Should the property be transferred or sold, the right of entry will need to be renegotiated. Unless payment is required, rights of entry are not transmitted to Headquarters.
- B. Form RES \_\_\_\_\_ 'RIGHT OF ENTRY' contains the basic language to into which is inserted the specific language describing the reason for the right of entry and the expiration date of the right.

### 9-8.3.3 Permit, Construction Permit

- A. A permit is a personal not a property right. It gives WSDOT permission to perform a service at the will of the property owner. Permits are used for mutual benefit situations such as reconnecting a driveway. These documents can be revoked by the property owner at anytime and are only valid with the current property owner. Permits are not transmitted to Headquarters.
- B. Form RES 326 'PERMIT' contains the basic language to into which is inserted the specific language describing the reason for the permit and the expiration date of the permit.

## 9-8.4 Lease

- A. A Lease obtains specific rights of tenancy. The termination of use of the property is specified and the rights and privileges of the lessee are specified.
- B. The *Lease for* \_\_\_\_\_ (Form RES-329) contains the basic lease language ("grants"), into which is inserted the language which establishes rights and privileges of the lessee and the termination.

1. See Section 9-7 for rental rate clauses (consideration).
2. The lessee's rights and privileges are described, adapting language such as the following:
  - a. "... the right, permit, license, and lease to use and occupy (for the purpose of) STOCKPILING OF ROAD MATERIAL including depositing and storing crushed stone and other highway materials as the exclusive property of the state . . ."
  - b. "... the right, permit, license, and lease to use and occupy (for the purpose of) the REMOVAL OF EARTH MATERIALS, including excavation and removal of rock, gravel, sand, or earth, from any portion of said land; storing materials and operating all necessary machinery and equipment thereon . . ."
3. See Section 9-8.3B2 for termination language.

### **9-8.5 Option (To Be Published)**

### **9-8.6 Consent to Change of Grade**

The Consent to Change of Grade (Form RES-323) is used only in those cases where the change of grade is to be accomplished entirely within the existing right of way.

## **9-9 Property Description**

### **Basic Descriptions**

A legal description, to be adequate, must be capable of being located on the ground with reasonable certainty by a competent surveyor, either with or without the aid of extrinsic evidence. (21 Wn. 371; 3 Wn. 2nd, 567; 12 Wn. 2nd, 589; 34 Wn. 2nd, 563.)

It is impossible in a short outline to cover all of the fine shadings of meaning which have been placed by our courts on language used in the description of land. When a comparison is being made of the language in a given description to the examples cited herein, care should be taken to see that wording is exactly as it was in the case cited. The Assistant Director Title and Condemnation Program will help with the interpretation of descriptions.

### **9-9.1 Illustrations of Adequate Description**

- A. The following are examples of adequate descriptions.
  1. Any section or subdivision of the U.S. Rectangular system of survey.
  2. Descriptions by reference to recorded plats, or to private surveys attached to and incorporated by reference.
  3. Metes and bounds tied to any point on either of the above, directly or by reference to an earlier deed, which in turn is so tied.
- B. A description fails if for any reason it is vague, indefinite, or so ambiguous as to be impossible to interpret. Sample inadequacies:
  1. 160 acres, more or less, in Section 2 -13 N. -2 E. (3 Wn. 2nd 565).
  2. A house at 2626 West Fairview (28 Wn. 2nd 110).
  3. "Approximately 207 feet" (24 Wn. 2nd 586).
  4. Description by reference to an unrecorded plat (21 Wn. 2nd 593).
  5. A description failing to name the county, state, or meridian and range (16 Wn. 34).

- C. The following have been held to be sufficient; however, their usage is not recommended:
1. “All the real estate in the state of Washington of record in the name of the grantor” (96 Wn. 592).
  2. “All property owned” by a certain company in a specified county. Held good as to all lands held under recorded title and would not pass lands acquired under an unrecorded deed (28 Wn. 2nd 953).
  3. “Tax lot 3, Section 32 -Twp. 12 N., R. 42, as at present designated on the tax rolls of the County Assessor of said County.” Sufficient provided the Assessor’s tax rolls contain an adequate description of the tax lot (38 Wn. 2nd 886). In spite of this case, the use of tax lot numbers as legal descriptions should be avoided at all costs. It is common practice in all Assessors’ offices to abbreviate and paraphrase the original description in the interest of brevity. In many cases, the abbreviated description covers the same parcel of land as the original, but in many other cases, important controlling or qualifying language is omitted or typographical errors are introduced, any of which could destroy the accuracy of the description.
- D. A court may apply its own wisdom in some cases, notwithstanding B above. If a deed appears adequate on its face, but a dispute arises over the location of the lines on the ground, or if the intent of the parties is obvious when certain facts are stricken | or altered, the court will allow oral testimony to determine the true meaning of the description. For example:
1. As where no block number is recited, but the grantor owns land only in one block in the recited addition, the court has read into the deed the missing block number (24 Wn. 225, 53 Wn. 285). The court has also substituted the word “southwest” for southeast in order to make the description close (8 Wn. 642).
  2. In a description failing to name the meridian “. . . Range 42 . . .,” the court supplied the missing term “*East Willamette Meridian*” as this was the only possible intention since Range 42 *West* would fall well out in the Pacific Ocean (38 Wn. 886).

### 9-9.2 Controlling Elements of a Description

- A. Natural and artificial permanent objects referred to in the description control over courses and distances. As where a metes and bounds description overruns a highway, and yet the highway is recited as being a boundary of the property, the highway controls (108 Wn. 413, also see 163 Wn. 10). The boundaries of a city lot are controlled by lines as actually run on the ground, as shown by surveyor’s stakes, rather than the lot lines as shown by the plat (30 Wn. 687, 94 Wn. 395).
- B. Where there is a variance between field notes and monuments as set out by the U.S. Government surveyors, the monuments prevail (41 Wn. 583, 70 Wn. 435, 172 Wn. 405).
- C. Metes and bounds control over the other elements. As in a conveyance by metes and bounds which also recites that the conveyance includes so many acres, the courses, and distances control even though they include a larger area than recited (38 Wn. 151).
- D. Reference to an adjoiner will control over recited bearings and distances (115 Wn. 454, 124 Wn. 179).
- E. Maps or field notes, where incorporated in a description by exhibit or reference, will control in case of conflict with courses and distances recited in the description (5 Wn. 425, 57 Wn. 392).

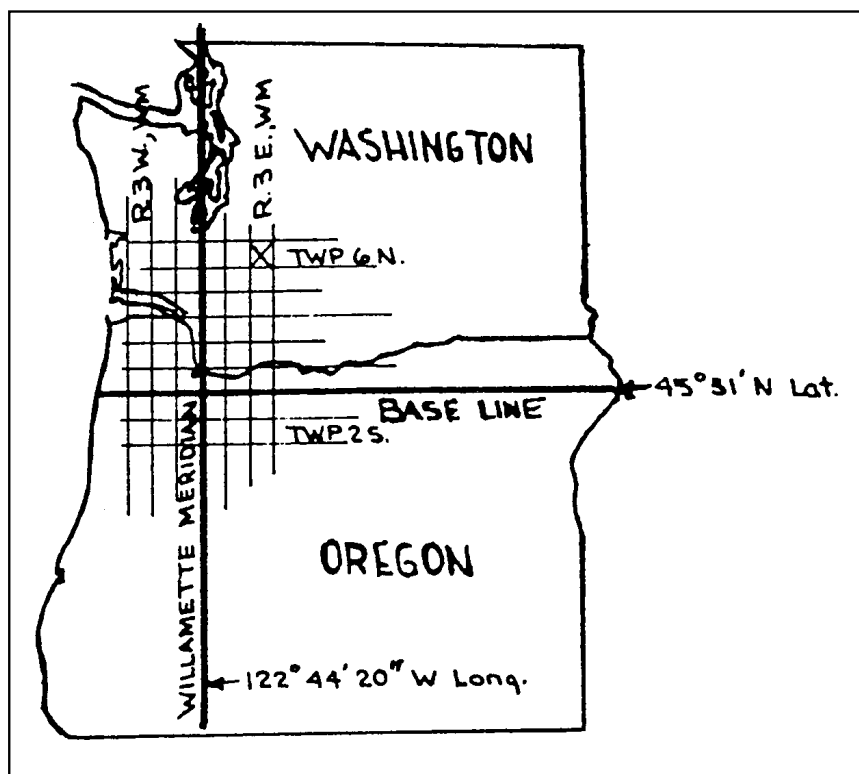
- F. Where there is a conflict in boundaries in two deeds from the same grantor, the title of the grantee in the deed first executed is superior (57 Wn. 150, 196 Wn. 54).
- G. In case of a conflict of terms in a description, it will be construed most strongly against the grantor (57 Wn. 392).
- H. One may reject a false and impossible part of a description if by so doing a perfect description remains (57 Wn. 150).
- I. The existence of an adequate legal description is only the preliminary step to establishing the property lines on the ground. The linking factor between the description and the boundary on the land is the monument. Monuments may be any visible, tangible, physical object in existence which marks a point or a line on the earth's surface. The following are typical adequate monuments:
  - 1. Clearly marked concrete posts (as are used by the federal surveyors to mark section and  $\frac{1}{4}$  corners).
  - 2. The line of ordinary high tide or high water.
  - 3. The thread of a stream.
  - 4. A tree, or a row of trees.
  - 5. An iron pipe.
  - 6. A bench mark (brass disc emplaced by USCGS).
  - 7. A fence.
  - 8. A building.
  - 9. A hedge.
  - 10. A sidewalk.
  - 11. A cliff.

A full discussion of the importance of monuments and the requirements for establishing their genuineness is beyond the scope of this text, but an excellent analysis of the problems involved appears in *Surveys, Subdivision and Platting, and Boundaries, Bureau of Governmental Research and Services, Report No. 137*. Published by University of Washington Press. 1958, Page 67, et seq.

### **9-9.3 Rectangular Survey Descriptions**

- A. The rectangular survey system was adopted in 1785. The system has been used in most of the states. For the purposes of the rectangular survey, the states of Washington and Oregon form a region. This region is quartered by a north-south line (the Willamette Meridian) and an east-west line (the Base Line) which intersect in Portland, Oregon (see Figure 9-9.3A). The tiers lying north or south of the Base Line are numbered consecutively and are called Townships. The columns lying east or west of the Willamette Meridian are numbered consecutively and are called Ranges. Each Township and Range also bears a compass direction which indicates its direction from the Base Line and from the Willamette Meridian respectively. Thus, the area marked with an "X" on Figure 9-9.3A is described as "Township 6 North, Range 3 East, Willamette Meridian." The Township (T or Twp) always appears first and the Range (R or Rge) second, followed by the Meridian (Willamette Meridian = WM). In the sample given, the information would usually appear in abbreviated form: "T6N, R3E, WM."

The Townships and Ranges are bounded by lines which are drawn parallel with the Base Line and the Willamette Meridian. In order to make up for the curvature of the earth, correction lines are inserted (after some variation in the early days) every 24 miles.



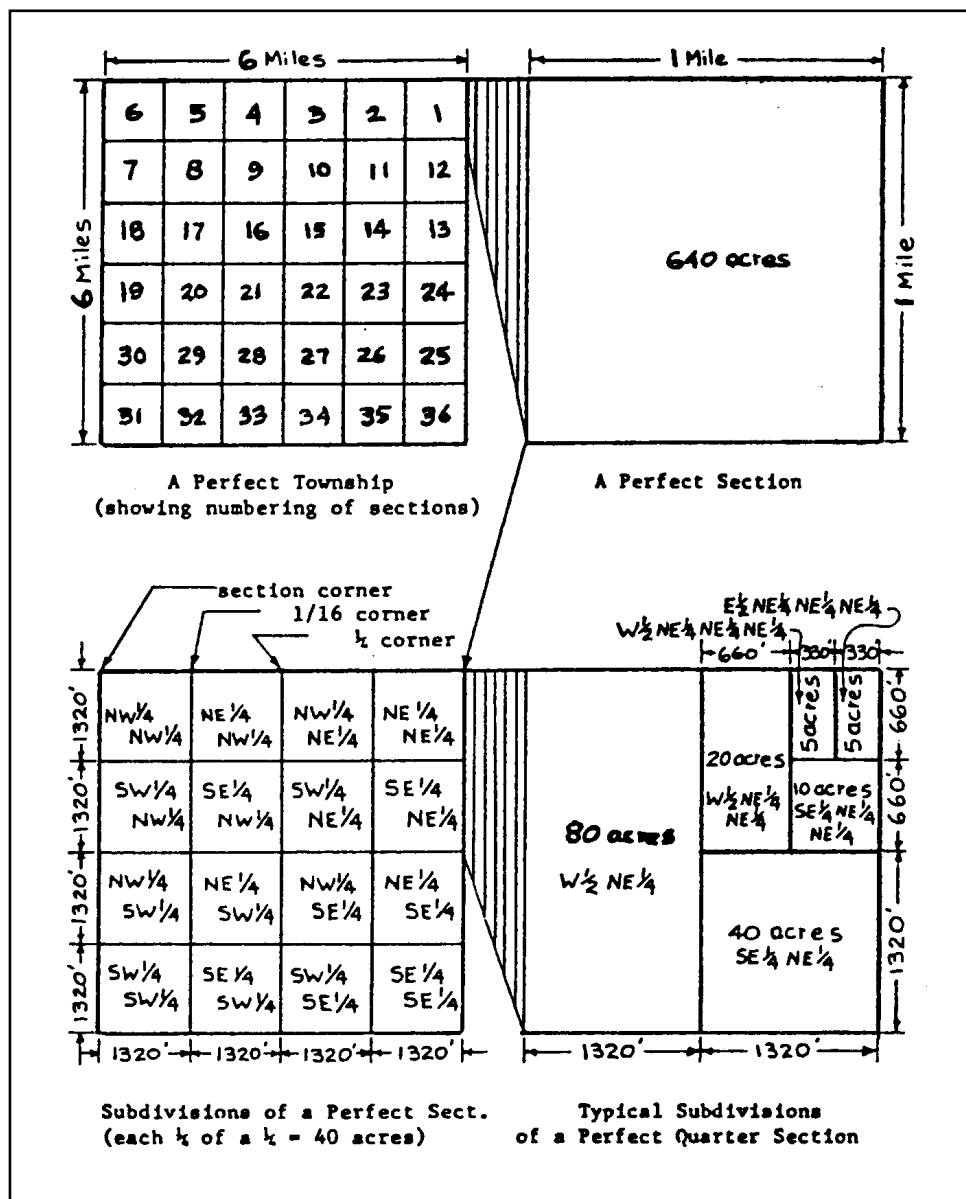
**Townships and Ranges**

*Figure 9-9.3A*

- B. Each Township consists of 36 sections (see Figure 9-9.3B), and each section ideally contains 640 acres. In practice, sections rarely are perfect.

The statute requires only the setting of the section corners, but in most instances in this state, the federal surveyors also set the  $\frac{1}{4}$  corners. The latter are required to be midway between the section corners on the section lines. The center lines are established by drawing straight lines connecting the  $\frac{1}{4}$  corners.

The method of further subdivision by private survey is to establish mid-points between the section corner and  $\frac{1}{4}$  corners (these are  $\frac{1}{16}$  corners). Straight lines connect these mid-points in each  $\frac{1}{4}$  with the corresponding mid-points on the opposite side.



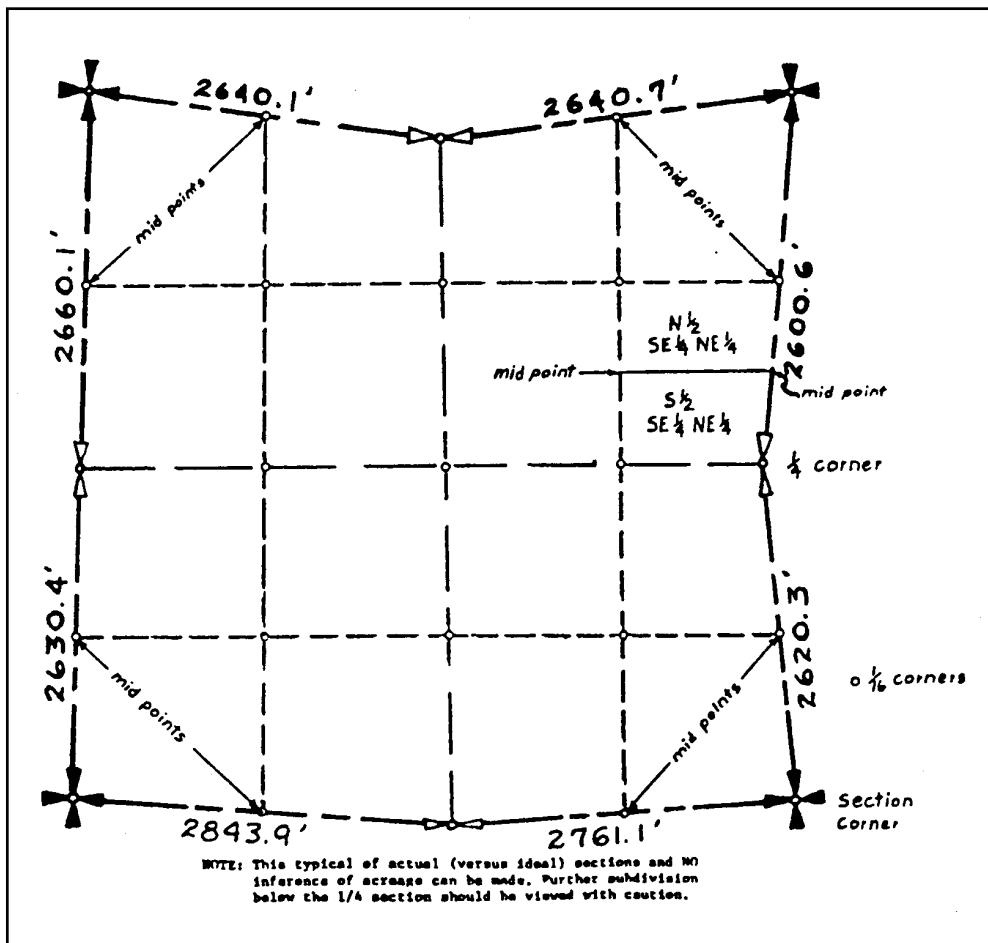
Land Areas and Dimensions

Figure 9-9.3B

- C. Once the corners have been placed by the Federal Surveyors and conveyances made, they stand as the true corners. This holds true no matter how small or large an error might have been made in the setting of the corners. Even with errors as great as those shown in Figure 9-9.3C, the monuments stand as placed and determine the size of the section and its subdivisions. However, in the absence of the original monuments, or witness marks, the field notes will control (41 Wn. 583). The more rugged the country, the less likely the existence of actual sections that are “perfect” or “ideal.”

The conveyance of large tracts of land within such a section is normally accomplished by the subdivision style of description. It is necessary to recite the section, township, range, county, and state, as well as the subdivision of the section, to complete the identification of the property. Further subdivision within such a section is accomplished by measurement (as distinguished from area, see Section 9-9.6C). For example, in Figure 9-9.3C, the  $N \frac{1}{2}$  and  $S \frac{1}{2}$  of  $SE \frac{1}{4} NE \frac{1}{4}$  are determined by connecting the mid-points on the East and West

Lines of the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ . The resultant areas and direction of the dividing line have no bearing on the problem unless the description specifically says the N  $\frac{1}{2}$  in area of SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ . In the latter case, the same rules apply as in subdividing platted land. (See Section 9-9.6C)



The Size of a Sections Determined by Its Monuments (Example)

Figure 9-9.3C

### 9-9.3.1 (Reserved)

### 9-9.3.2 Hazards in Interpretation

#### 9-9.3.2.1 Dimensional Units

Unless a perfect subdivision is involved, the E 660' of the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  is not the same as the E  $\frac{1}{2}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ . Similarly, the West 20 acres of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  is not identical with the W  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ . In the first case the east-west dimension may well be other than 1320' ( $\frac{1}{2} = 660'$ ), and in the second the "40" may actually contain more or less than 40 acres.

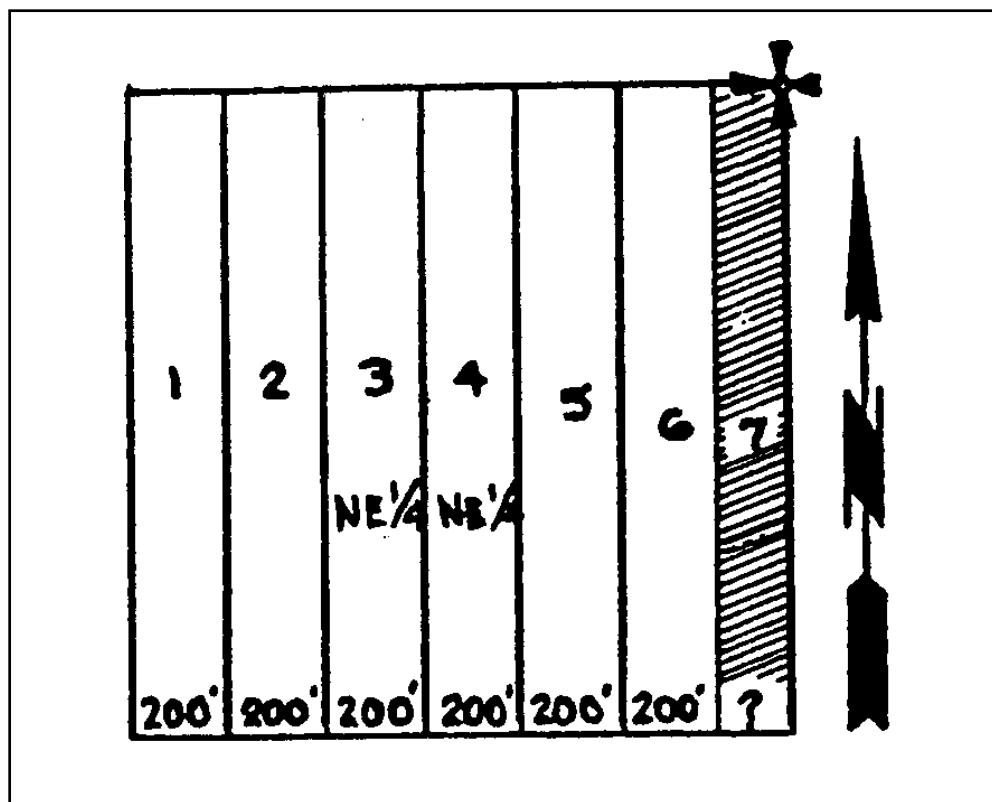
#### 9-9.3.2.2 Different Points of Reference

One of the most common faults in the description of parts of a Government subdivision arises in conveyances using two different points of reference. In Figure 9-9.3.2.2, conveyances of Tracts 1 through 6 have been made by reference to the West line, as follows:

“The West 200’ of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ ,” describes Tract 1. Similarly, “the East 200’ of the West 400’ of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ ,” describes Tract 2, etc.

An error will be introduced if Tract 7 is described as “The East 120’ of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ ” on the assumption that the subdivision is regular in size. The only safe technique for describing Tract 7 is to refer to the entire subdivision and except therefrom all lands which have been conveyed earlier, as follows:

“The NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , EXCEPT the West 1200 feet.”



Description of Tract 7 (Example)

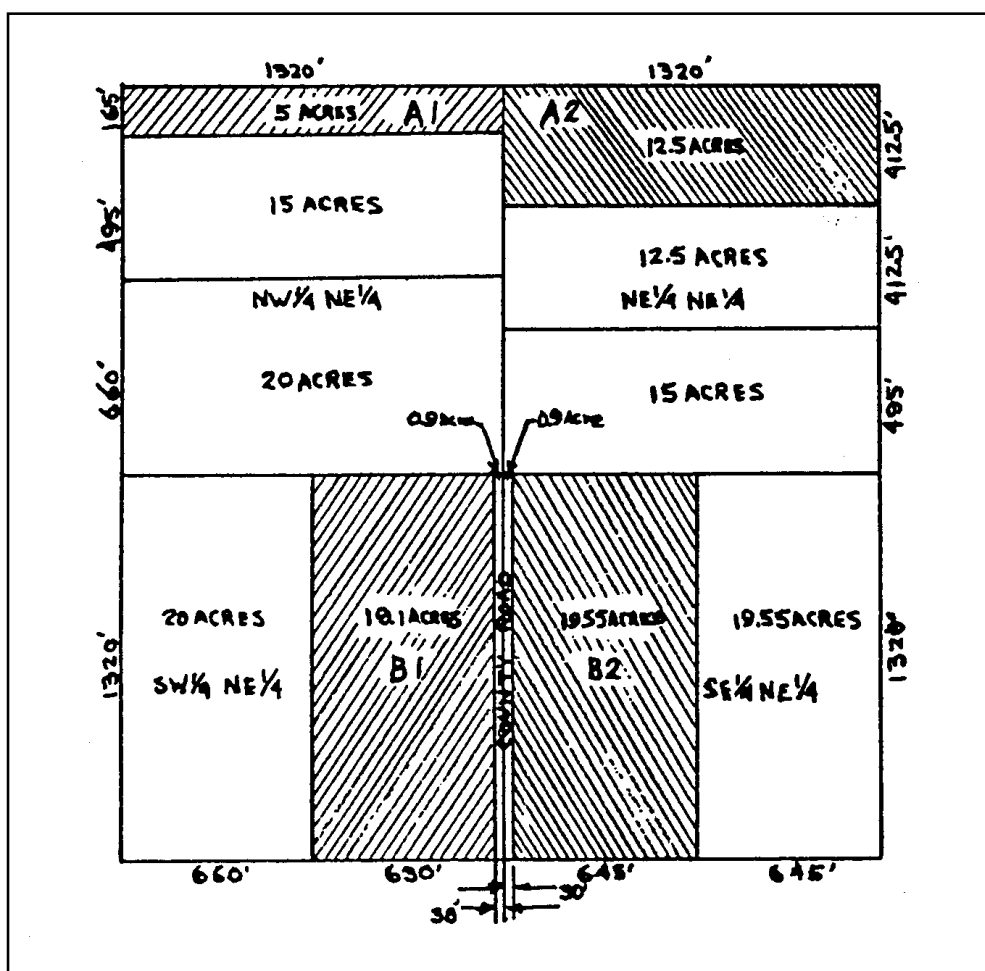
Figure 9-9.3.2.2

### 9-9.3.2.3 Descriptions Involving Exceptions

Language and punctuation are extremely important. Minor changes in language and punctuation can have major effects on the description. The shaded areas in Figure 9-9.3.2.3 represent the tracts described by the following descriptions. For each pair of descriptions, note the effects of minor changes of language and punctuation.

- A. 1. The N  $\frac{1}{2}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , except the S 15 acres.
2. The N  $\frac{1}{2}$  of the following described tract: The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , except the S 15 acres.
- B. 1. The E  $\frac{1}{2}$  SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , except the East 30’ thereof for county road.
2. The W  $\frac{1}{2}$  of the following described tract: The SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , except the West 30’ thereof for county road.

In each of the above cases, the language and punctuation determine how the exception is to be taken and, therefore, the size of the tract described.



Language and Punctuation and Their Effect Upon Descriptions (Example)

Figure 9-9.3.2.3

#### 9-9.3.2.4 Ambiguity

Care should be taken to avoid combining several different subdivisions into one description in such a way that interpretation is difficult. In the following example, to what does the “W 1/2” refer?

“The W 1/2 of the NE 1/4 and the SE 1/4 of Section . . .”

If the intention is for the “W 1/2 to apply only to the NE 1/4,” the following would be better:

“The SE 1/4 and the W 1/2 of the NE 1/2 of Section . . .”

If the intention is for the W 1/2 to apply to both quarter sections, the following would be better:

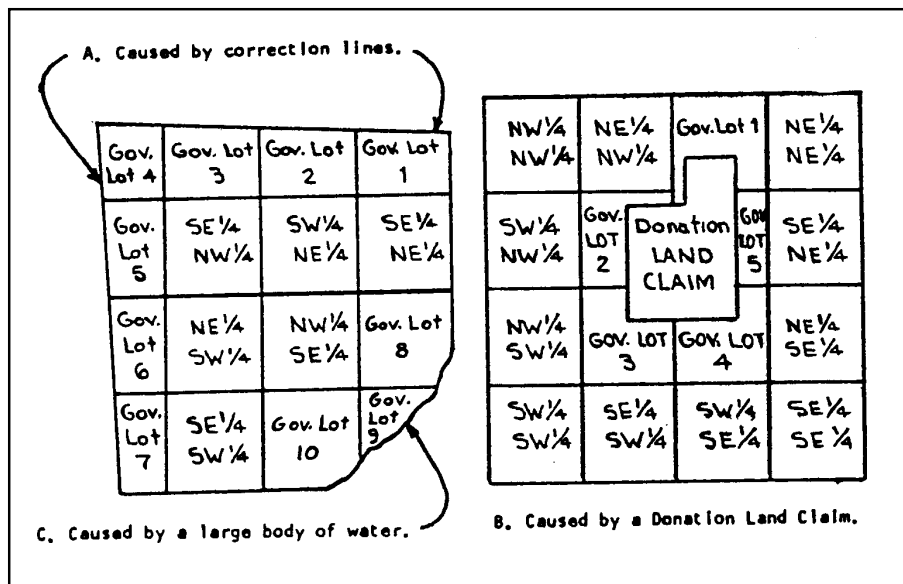
“The W 1/2 of the E 1/2 of Section . . .”

#### 9-9.3.3 Government Lots

Under the U.S. rectangular survey system abnormally-sized subdivisions of a section are called Government Lots and are numbered. Examples of the causes of Government Lots are illustrated in Figure 9-9.3.3.

- A. When the excesses or shortages in the area of subdivisions are caused by correction lines, the corrections are made by designating the northerly and westerly subdivisions of the section as Government Lots (see A in Figure 9-9.3.3).

- B. Government Lots are created in those subdivisions which border a grant which preceded the U.S. rectangular survey. For example: Donation Land Grants are excluded from subdivision (see B in Figure 9-9.3.3). Similarly, when a mining claim is patented, the U.S. Bureau of Land Management draws an amended plat of the section and assigns Government Lot numbers to the remaining portions of subdivisions which border the patented mining claim.
- C. Government Lots are also created where the normal layout of a section is precluded by the existence of a body of water (see C in Figure 9-9.3.3); e.g., along the shores of Puget Sound, large lakes, or rivers.



**Government Lots and Normal Subdivisions (Example)**

Figure 9-9.3.3

#### 9-9.3.4 Tide and Shorelands

One of the areas of greatest confusion exists in the definition of “navigable” bodies of water. The Washington State Supreme Court has held that to be navigable within the meaning of Article VII of the state Constitution, a body of water must be capable of being used to a reasonable extent in the carrying of commerce in the usual manner by water, and be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation. (167 Wn. 385, 195 Wn. 537, 16 Wn. 2nd 107).

On attaining statehood (November 11, 1889), the state of Washington asserted its ownership of the beds and shores of all navigable bodies of water in the state, excepting only those previously patented by the Federal Government. The question of the navigability of any particular stream or body of water can be answered only by a decision of the State Supreme Court — in the absence of such a decision, DNR assumes the stream or body of water to be navigable if it has been meandered.

All “navigable” rivers are meandered (how the surveyor was to determine this point is uncertain). Also meandered is any river whose right angle width is three chains (198 Engineer’s) or more, and all lakes of 25 acres or more (see *Manual of Surveying Instructions*, U.S. Department of Interior, Bureau of Land Management, 1947, U.S. Government Printing Office, Superintendent of Documents).

Therefore, the boundary between the uplands and the abutting tide or shorelands varies according to the history of the upland title as follows:

- A. If the Government Lot was patented (a patent is the original conveyance by which the real property is transferred from the United States to private ownership) prior to statehood, its outer boundary is either the “ordinary high water mark” (see Section 3-2) or the meander line, whichever is farther out (see Government Lot 2 in Figure 9-9.3.4).
- B. If the Government Lot was patented after statehood, its outer boundary is the “ordinary high water mark” since everything beyond that line now belonged to the state (see Government Lot 1 in Figure 9-9.3.4).

The upland owner has no rights of any kind in the abutting tide or shorelands unless he has acquired the said lands. (*Note:* The upland owner of Government Lot 2, Figure 9-9.3.4, “has acquired” some (at least) of such tide lands (shorelands) if he acquired under A above and the meander line is “farther out;” however, they are legally uplands and not tide or shorelands within the meaning of this section.) Until 1971, the upland owner had a limited preferential right to acquire the abutting tide or shorelands from the state. In that year, the legislature prohibited all further sales of tide or shorelands except to public agencies (RCW 79.01.470). It is still possible to arrange for exchanges of tide or shorelands, or to lease such lands from the state for up to 55 years.

On the other hand, the upland owner who has acquired the abutting tide or shorelands is entitled to all of the rights peculiar to a riparian or littoral owner, and, in particular, has a perpetual right of access to the navigable waters adjoining. Thus, when Lake Washington was lowered by the opening of the Lake Washington Ship Canal, the owners of the adjacent uplands and shorelands automatically acquired title to the relicted lands and the outer limit of their title extended to the new Inner Harbor Line (76 Wn. 158).

Up to March 8, 1911, conveyances of tidelands by the state were limited to the lands between the outer limits of the Government Lot and the mean low tide line. After that date, the tidelands were conveyed out to the extreme low tide line.

Care should be taken in the examination of a state deed for tidelands to ascertain that the deed is not merely for the limited purpose of growing oysters. Such a deed does not carry fee title, but limits the use of the lands for the purpose of growing oysters. Oyster land deeds can usually be quickly recognized since the majority of these conveyances contain metes and bounds descriptions whereas tide and shorelands are normally sold by the front foot abutting upon a described length of the meander line. There were several acts which authorized oyster land conveyances, and each contains a reversionary clause which provides that the lands will be forfeited back to the state when they are no longer used for growing oysters or if they are used for any other purpose:

Chapter 24, Laws of 1895:

*The Bush Act*, enacted March 2, 1895, repealed 1935, provided oyster lands revert to the state when they are used for any purpose other than the cultivation of oysters.

Chapter 25, Laws of 1895:

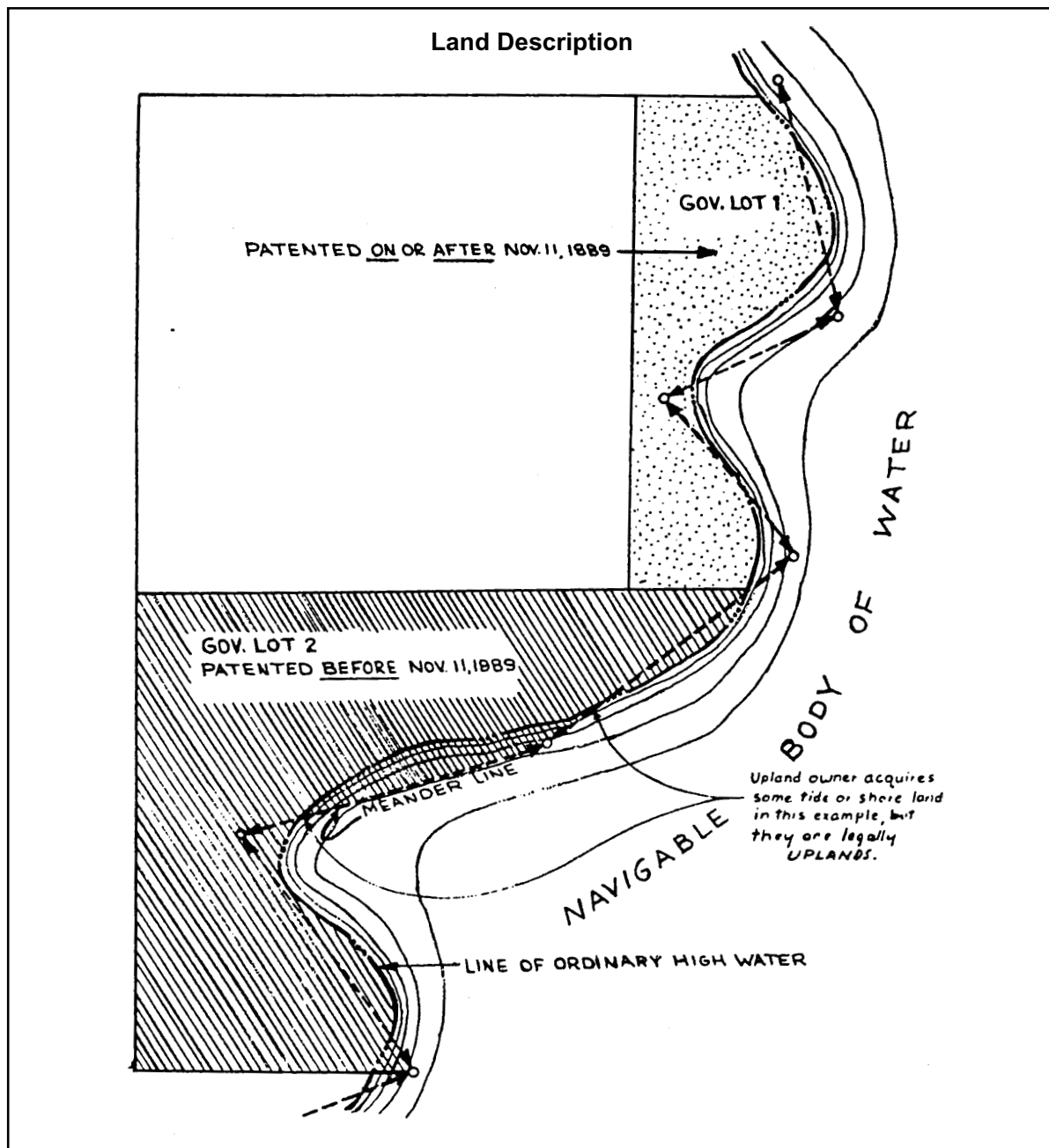
*The Callow Act*, enacted March 4, 1895, repealed 1935, provided that oyster lands revert to the state when they cease to be used for the cultivation of oysters.

Chapter 195, Laws of 1919:

This act affects only a few isolated tracts.

Chapter 255, Laws of 1927:

The reversionary rights of the state can be extinguished by purchase, and by the acquisition of such rights, the holder of any oyster land deed can acquire full fee title.



**Limits of Upland Ownership (Example)**

Figure 9-9.3.4

#### 9-9.3.4.1 Classes of Tide and Shorelands

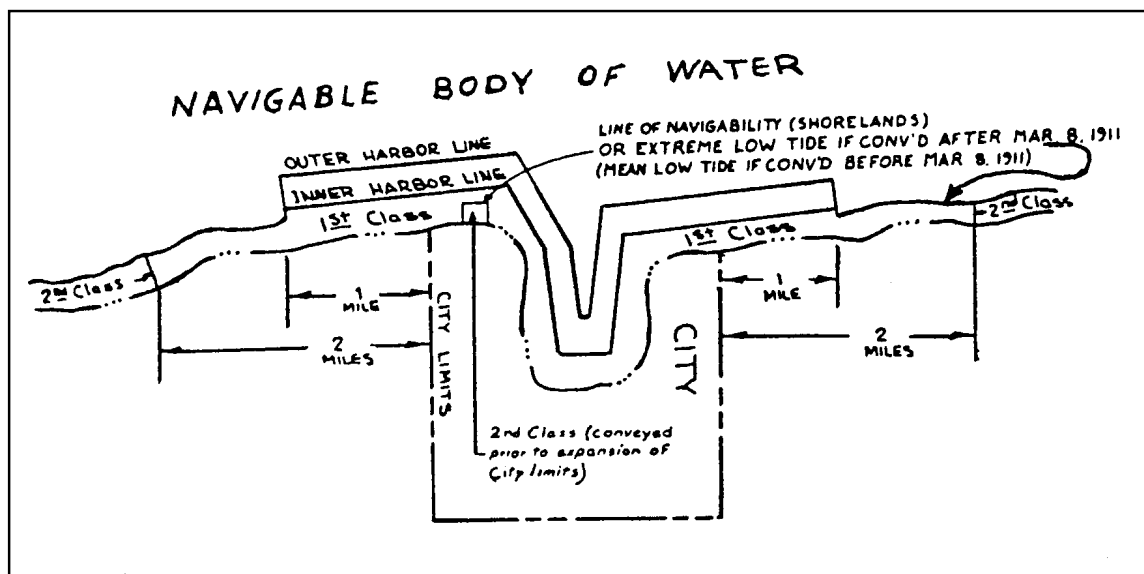
All tide or shorelands in the state are either first- or second-class tide or shorelands.

First-class tide or shorelands are those lying within the corporate limits of a city and within 2 miles on either side thereof. Within the city and for 1 mile on either side thereof, the outer boundary of first-class tidelands is the inner harbor line. Between the first and second mile, the outer limits are the same as for second-class tide or shorelands. (see Figure 9-9.3.4.1).

The lands between the inner and outer harbor lines may be leased from the state for the benefit of navigation or commerce. The inner and outer harbor lines define the harbor area, with the outer harbor line marking the outermost limit of improvements such as piers or docks.

Second-class tide or shorelands are all others than those defined as first-class. The outer boundary of second-class tide or shorelands (and of first-class tide or shorelands lying between the first and second mile beyond the city limits) is the extreme low tide line if conveyed by the state on or after March 8, 1911, the mean low tide line if conveyed by the state before March 8, 1911, or the line of navigability (see Figure 9-9.3.4.1). The line of navigability is a line where the water is of sufficient depth for ordinary navigation; at least one court has ruled that is also the test for locating the Inner Harbor Line (76 Wn. 58).

Tide and shorelands are classified as of the date of their sale by the state. Therefore, a parcel which was originally sold as second-class tidelands would remain so classified and would retain its second-class boundaries, even though the parcel was later engulfed by an expanding city.



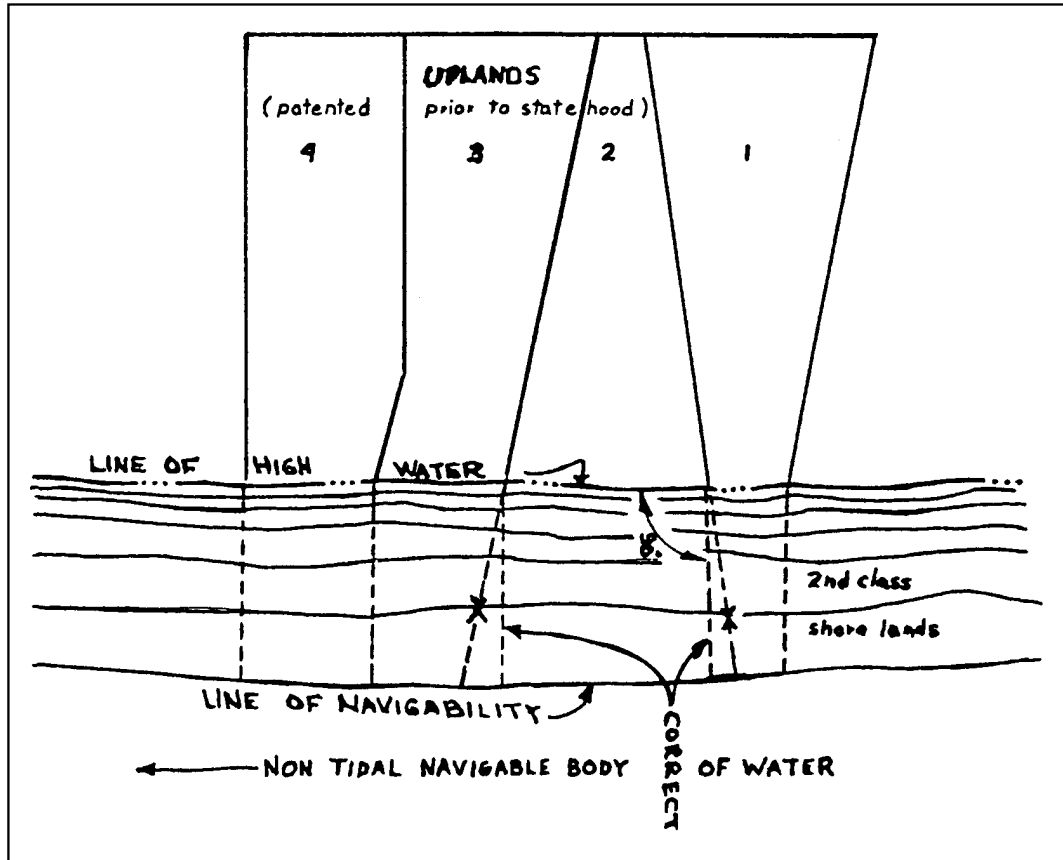
**Classes of Tide and Shorelands**

Figure 9-9.3.4.1

#### 9-9.3.4.2 Lateral Boundaries of Waterfront Tracts

- A. When tide and shorelands are sold, they are usually described by the front footage abutting upon a described length of the meander line. No direction is given to the lateral end lines. Hence, a considerable body of law has been built up to solve disputes in this area. See Section 9-9.4 as to lands bounded by unnavigable bodies of water.

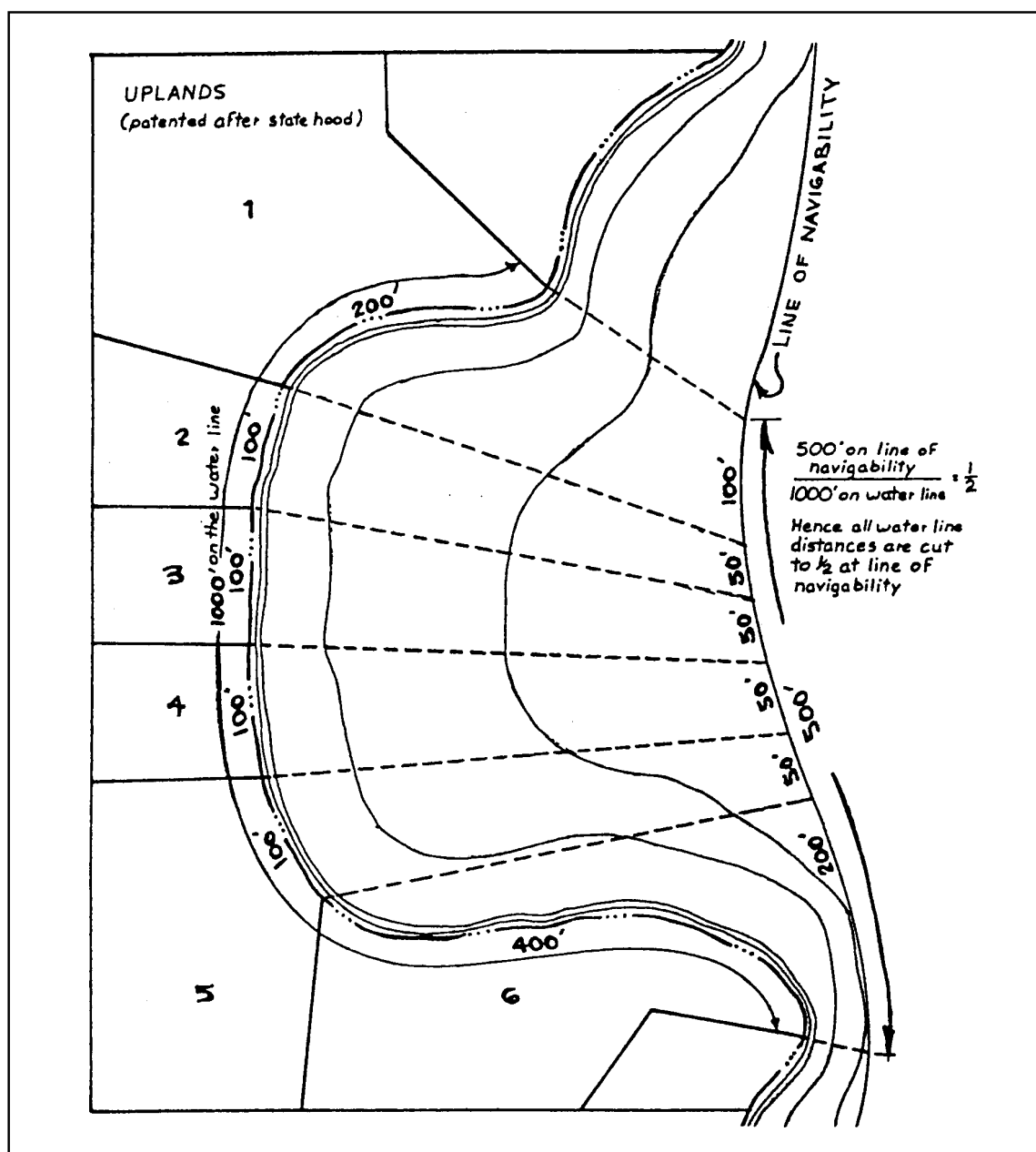
- B. The lateral lines of a waterfront tract are generally extended out into the water approximately at right angles to the shoreline or line of the ordinary high water mark. Figure 9-9.3.4.2B illustrates the point that an upland owner (e.g., the owner of tract #2) is not entitled to extend his boundary lines out into the water along their upland directions, but must erect lines at right angles to the shore (*Spath vs. Larsen*, 20 Wn. 2d 500, *Kanin vs. Lister*, 27 Wn. 2d 785).



**Lateral Boundaries of Waterfront Tracts (Example)**

*Figure 9-9.3.4.2B*

- C. The exception to this rule is in the case of properties located on a cove. The State Supreme Court settled a lateral property line dispute in a cove by connecting property lines at the shoreline with proportionate lengths of frontage at the line of navigability. Figure 9-9.3.4.2C illustrates the principle of granting each owner of waterfront on a cove a proportionate share of the water frontage on the line of navigability.



### Lateral Boundaries of Waterfront Tracts on a Cove (Example)

**Figure 9-9.3.4.2C**

#### 9-9.3.4.3 Development of Tide and Shorelands

The freedom to develop tidelands, shorelands, and the abutting “wetland areas” is now regulated by the *Shoreline Management Act of 1971* (RCW 90.58). “Wetland areas” are those lands extending landward for 200 feet from the ordinary high water mark, and all marshes, bogs, swamps, river deltas, and flood plains. With certain minor exceptions (e.g., single family residences not exceeding 35 feet in height, barns on agricultural wetlands, normal protective bulkheads for single family residences, etc.), any development within the “wetland areas” requires securing development permits in accordance with the requirements of RCW 90.58 in addition to the usual building permits.

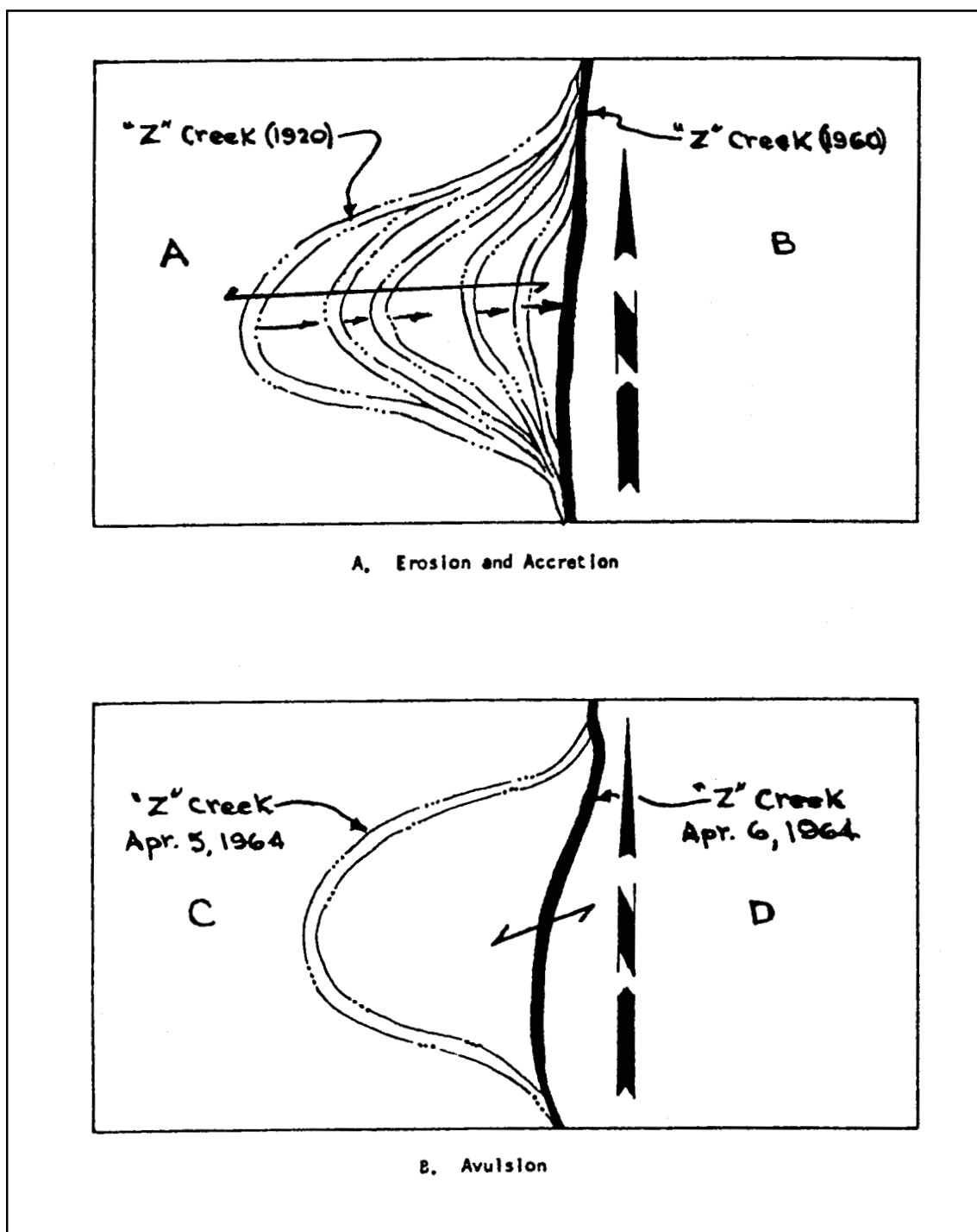
In addition, the Chelan Case (*Wilbour vs. Gallagher*, 77 Wn. 2d 307) also restricts the right to develop tide or shorelands. In this case, the Court ruled that, even though the area in dispute was owned in fee (subject to the rights of the Chelan Electric Co. and its successors to impound the waters of the lake and to raise its level to an elevation of 1,100 feet) by the defendants, the defendants must remove a landfill which they had placed in Lake Chelan on the grounds that the landfill interfered with the rights of the public to use the waters of the lake.

#### **9-9.4 Lands Bounded by Unnavigable Bodies of Water**

Generally, a property bordered by an unnavigable river, stream, slough, or body of water will carry title to the “thread of the stream” or the center of the lake. However, if the legal description uses some clearly limiting term (e.g., “to the bank of ‘Z’ Creek”), the grantee has not acquired any interest in the bed of the stream.

When an unnavigable stream forms the boundary between two properties, and the stream gradually shifts its location (by erosion on one side and accretion on the other), the boundary between the properties shifts with the shifting stream. This has been established by many court decisions on the basis that the owner cannot identify that portion of his land which has been washed away, carried downstream, and deposited on another’s land. Thus, in A of Figure 9-9.4, owner A acquires title to the land lying westerly of “Z” Creek as the creek slowly changes course.

On the other hand, when the stream suddenly jumps its bank and takes a new course, as in a spring flood (avulsion), the property lines do not shift. Thus, in B of Figure 9-9.4 the property line between owners C and D does not change because of the flood on April 6, 1964.



**Properties Bordered by Unnavigable Streams (Example)**

Figure 9-9.4

### 9-9.5 Metes and Bounds Descriptions

This method of land description involves locating property by: (a) a reference and tie to a legal monument (or point of public record) and (b) an outline of the courses and lengths of each line of the perimeter of the property.

The point of origin in any metes and bounds description is normally called “the point of beginning.” If the property boundary does not include the monument at which the description begins, and a tie call or calls must be used to get to the first corner of the property being described, the first corner of the description and the end of the tie are identified as “the true point of beginning,” and the same term is again used in the closing call.

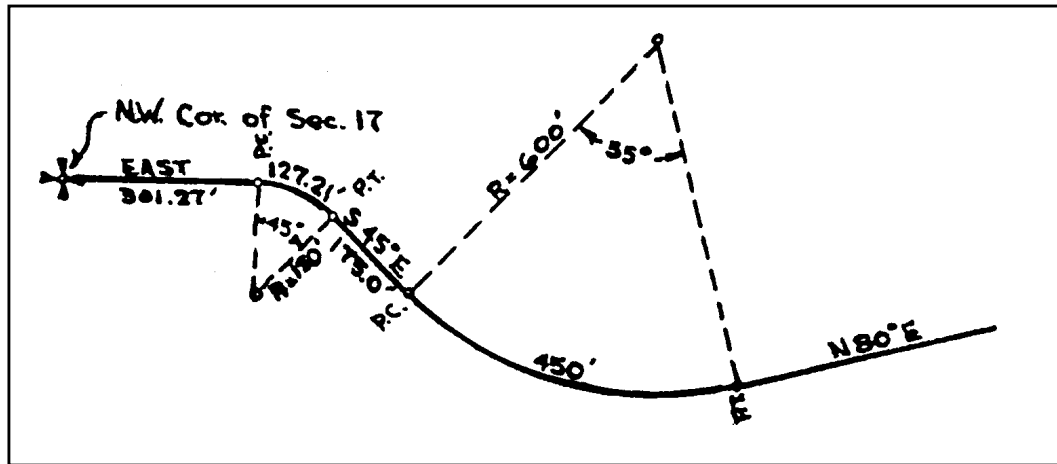
#### **9-9.5.1 Controls**

- A. A good description makes frequent use of “controls” which will govern over either bearings or distances recited. For instance, it is common practice on the closing course to recite “. . . , more or less, to the (true) point of beginning.” This final call will then automatically be forced to close on the (true) point of beginning in spite of any errors of survey or description language.
- B. The following are examples of other common controlling language:
  - 1. “Thence North 89° 59’ East 590’, more or less, to the west line of Primary State Highway No. 16, Twisp to Winthrop.” This call would run to the west line of the highway even if the true distance is actually 600 feet. Similarly, the call does not overrun the highway, even though the true distance is only 550 feet. This is true even without the words, “more or less” appearing in the call (108 Wn. 413).
  - 2. “. . . thence North 17° 31’ West along the southwesterly right of way line of the N.P.Ry.Co. . . .” Regardless of the true bearing of the railway right of way line, this call would follow along the right of way boundary.
  - 3. “. . . thence East 120’, more or less, to the southeast corner of a tract of land conveyed to Elmer Fudd, by deed recorded in Vol. 799 of Deeds, Page 601, records of said county . . .” (124 Wn. 179). This is good practice, particularly when describing property adjacent to a tract which was carved out of a larger parcel at some date prior in time. Such a point in a prior description may even be used as a “point of beginning.” Care should be taken, however, to be certain that the description in the deed referred to is adequate. Such a control will insure against an accidental hiatus (gap) or overlap in the descriptions of the two parcels.

#### **9-9.5.2 Description of Curved Lines**

Boundary lines running along curves are frequently encountered in descriptions bordering in highways, county roads, and railroads.

- A. A description of the line in Figure 9-9.5.2A would read: “Beginning at the Northwest corner of Section 17, Township \_\_\_\_\_, Range \_\_\_\_\_ E, WM; thence East along the North line of said section 301.27’; thence along the arc of a curve to the right having a radius of 150.0 feet a distance of 127.21 feet, (or through a central angle of 45°: thence South 45° East 175.0 ft; thence on the arc of a curve to the left having a radius of 600 feet a distance of 450 feet; thence North 80° East . . .”

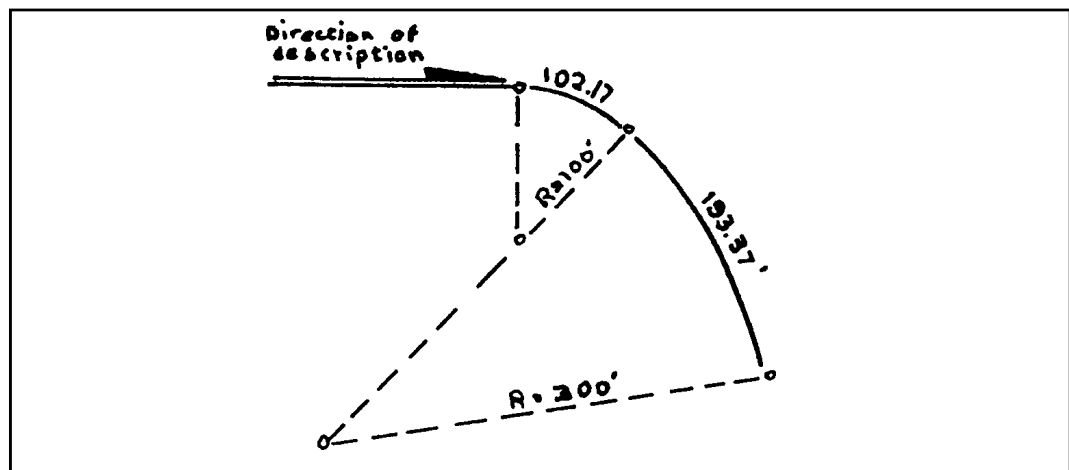


Typical Curved Line (Example)

Figure 9-9.5.2A

- B. A compound curve is one in which the radius of the curve is changed somewhere along the arc without the intervention of a tangent course.

The description of the line Figure 9-9.5.2B would read: “thence along the arc of a curve to the right having a radius of 100 feet a distance of 102.17 inches; thence along the arc of a curve to the right, having a radius of 300 feet, a distance of 193.37 . . .”



Compound Curve (Example)

Figure 9-9.5.2B

### 9-9.6 Platted Property

The recording of an official plat with the County Auditor considerably simplifies the legal descriptions of the properties shown on the map. Generally, any lot or block identified on the face of the plat can be accurately described by simply naming the lot, block, name of the addition, and the name of the county and state and reciting the volume and page of plats and the county where the official copy of the particular plat has been recorded. The name of the plat, as well as the volume and page, should be taken only from reliable sources.

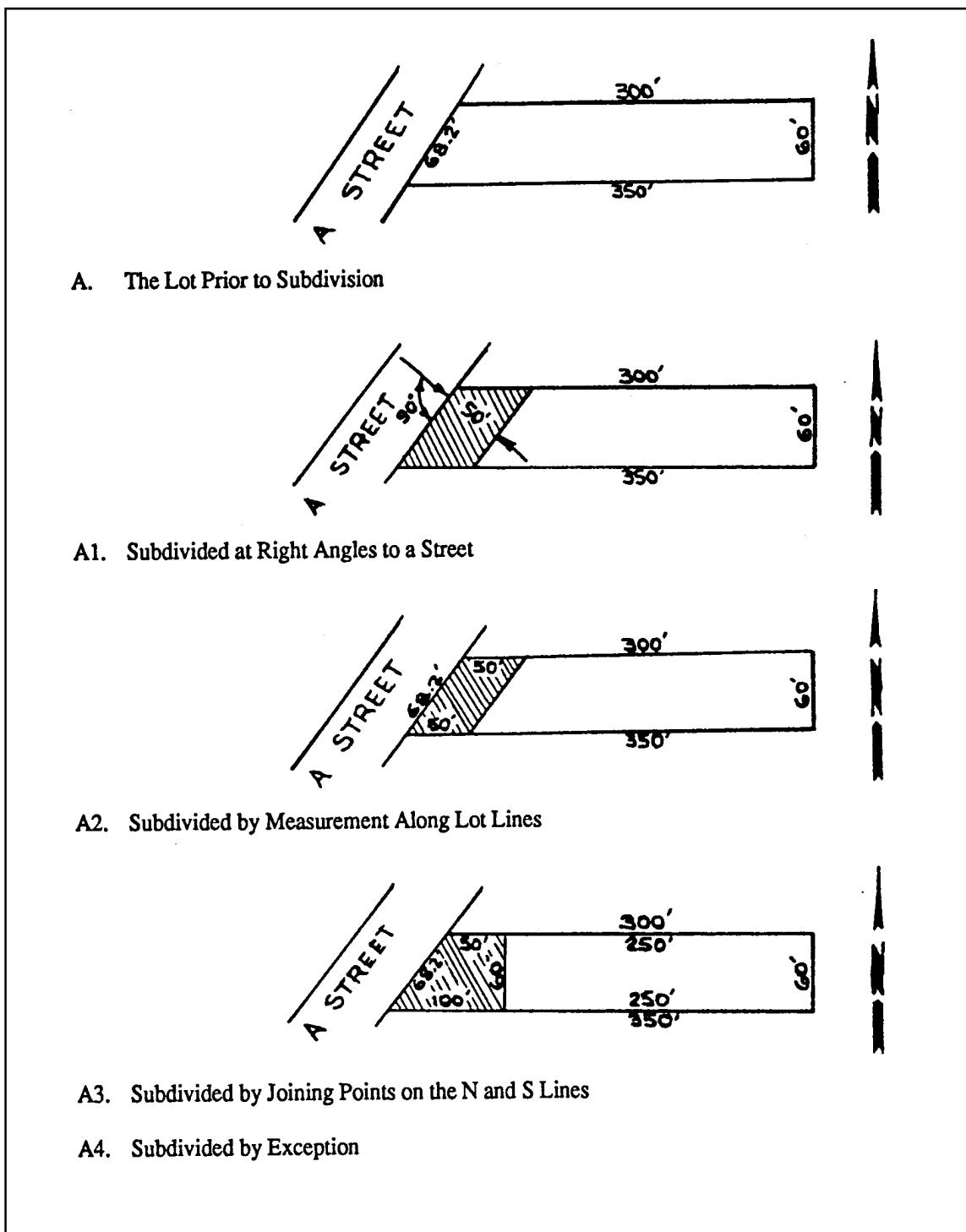
Where the conveyance covers all of a given lot or block, little difficulty can arise if care is taken to recite the plat name and recording information accurately. Problems do, however, frequently arise in the description of part of a platted lot.

Where the lot is rectangular and oriented N and S, or E and W, there are few difficulties encountered in describing a fraction of the lot. The east 100 feet, or the east  $\frac{1}{2}$ , or the east 2 acres, of a given lot, are all determinable with certainty. A different and considerably less simple problem exists where the lot is not rectangular or is not oriented N and S, or E and W. Consider the following cases:

A. How would you measure the west 50 feet of the lot at A in Figure 9-9.6A?

Obviously, there are several ways in which the measurement could be made and to eliminate all possibilities of misinterpretation, the description should be reworded so that it can be interpreted in only one way. Sections 9-9.6A1 through 9-9.6A4 illustrate the desirable language to cover various possible intentions of the parties.

1. The westerly 50 feet, when measured at right angles to "A" St. (see A1, Figure 9-9.6A).
2. The westerly 50 feet, when measured along the north and south lines (see A2, Figure 9-9.6A).
3. All that part of Lot, Block Addition, lying westerly of a line drawn from a point on the north line of said lot, 50 feet easterly of the northwest corner thereof, southerly to a point on the south line of said lot, 100 feet easterly of the southwest corner thereof (see A3, Figure 9-9.6A).
4. An easier way to describe the same parcel as in Section 9-9.6A3, would be as follows: All of Lot \_\_\_\_\_, Block, \_\_\_\_\_ Addition, according to the plat thereof recorded in Vol. \_\_\_\_\_ of Plats, Page \_\_\_\_\_, records of \_\_\_\_\_ County, Washington, except the east 250 feet thereof (see A4, Figure 9-9.6A).



**Possible Subdivisions of a Platted Lot (Example)**

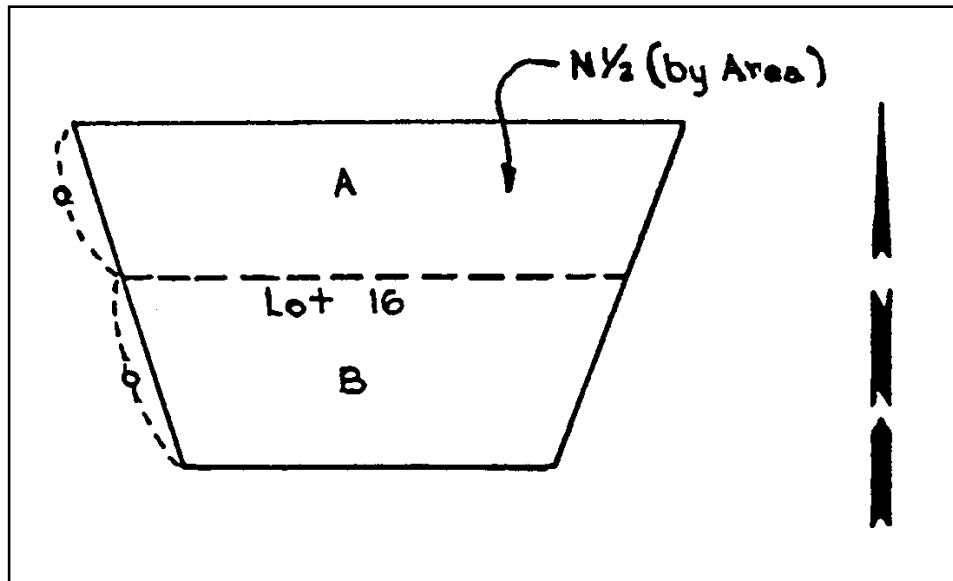
*Figure 9-9.6A*

- B. Generally, directions unless qualified or controlled by other words (such as “parallel with” or “along the section line”) will be construed as meaning due North, East, etc. (2 Wn. 198, 135 Wn. 539).
- C. A description calling for the “north half” is interpreted north half in area, not necessarily a line mid-way between the north and south lines (16 Wn. 39, 68 Wn. 351).

The description of Tract "A" in Figure 9-9.6C is as follows: "N  $\frac{1}{2}$  Lot 16." Therefore, Lot 16 is divided by a due East-West line so that the area of Tract "A" is equal to the area of Tract "B." Obviously, the distance "a" is less than the distance "b."

Even if the N and S boundaries were not parallel, the dividing line would be a due E and W line, creating two parcels equal in area.

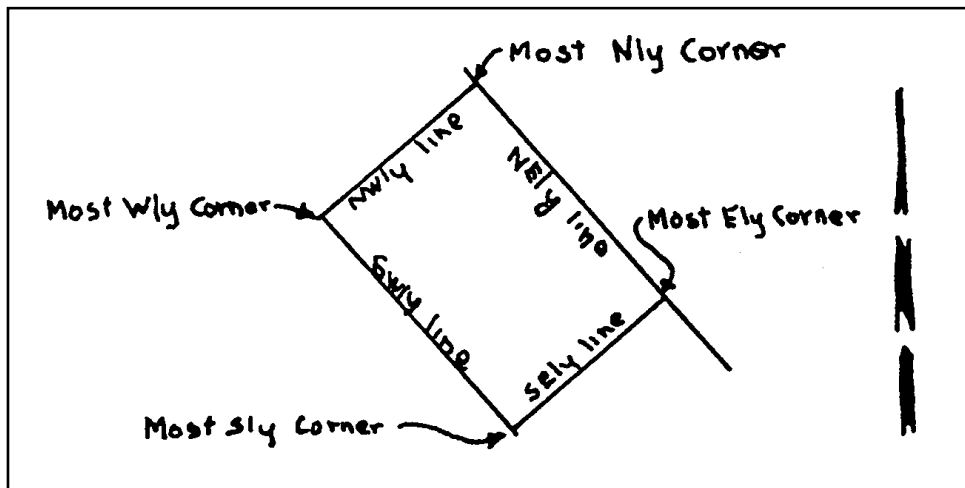
The only exception to the above rule is where such language is used in connection with the government subdivision, then the rules for subdividing sections apply (see Section 9-9.3).



**Subdivision by Area — Platted Lands (Example)**

*Figure 9-9.6C*

- D. Where a lot is not oriented N and S, or nearly so, the possibility of confusion exists when referring to the lines and corners of the lot. In Figure 9-9.6D, it would be difficult to determine which corner is the "northwest corner" of the lot, or which line is the "North" line. Terminology which eliminates the difficulty is shown in Figure 9-9.6D.



**Orientation of a Lot (Example)**

*Figure 9-9.6D*

- E. Care must be taken in combining descriptions of fractions of lots with full lots to be certain that the resulting description is free of ambiguity. For instance, does “the W 1/2 of lot 7 and lot 8” mean all of lot 8 or only the “W 1/2?” All question of interpretation is removed by reciting the full lot first, as “All of Lot 8 and the W 1/2 of Lot 7,” if that is the desired intention.
- F. If parts of two lots, together with a full lot are to be described, clarity can be assured by the following style:

The N 1/2 of Lot 7, all of Lot 8 and the S 1/2 of Lot 9.

### **9-9.7 Streets, Roads, and Highways**

Generally, any description adjoining on a street, road, or highway, which is only an easement, carries by implication the underlying fee to the center of the street. This is not true where the right of way is held in fee. For many years, almost all state highways have been acquired in fee, and since June of 1909, streets acquired by condemnation by cities and towns could be acquired in fee and therefore properties adjoining such rights of way do not carry any underlying interest in the road. Practically, all streets dedicated to the public on recorded plats are considered to be mere easements, and the owner of an abutting lot also has the underlying fee to the adjacent half of the street (79 Wn. 455 and 137 Wn. 452).

Where a street has been vacated, a question arises as to whether the vacated portion adjoining will pass without specific mention thereof in the conveyance. Generally, this will be governed by whether or not the vacated portion is of sufficient size to be capable of separate use.

If the vacated land is a narrow adjacent strip, as where an 80-foot street is narrowed to 60 feet by the vacation of the outer 10 feet on each side, or where it is a narrow alley, a conveyance of the adjoining land after the vacation would carry the vacated lands automatically whether mentioned in the deed or not (52 Wn. 341, 167 Wn. 39).

However, if the vacated strip is capable of separate use, it must be described to indicate an intent of the grantor that he did not wish to retain title to the strip (74 Wn. 462, 137 Wn. 452).

A perimeter street in a plat dedicated prior to June 13, 1901, attaches entirely to the abutting lots, provided the plat owner owned nothing beyond the limits of the area platted. The logic is obvious that owners outside the limits of the plat had no part in the dedication of the perimeter street, and when the easement to the public is lifted by the vacation proceedings, the original boundary line is restored to exactly where it was at the time of the vacation (54 Wn. 595).

The Act of 1901 purports to take the outer half of a perimeter street away from its rightful owner (i.e., the plat owner or his successors) and give it to the abutting owner outside the limits of the original plat. This point has apparently not been before our courts, but it is very likely that the statute might be considered unconstitutional. Article I, Section 16, Amendment 9, provides that private property shall not be taken for private use.

In addition to the usual formal vacation proceedings, a platted street may become vacated under the nonuser statutes (Laws of 1889-90, Section 32, page 603, amended by Laws of 1909, Chapter 90, page 188) provided that all of the following conditions are met:

- A. The plat must have been recorded on March 12, 1904, or earlier.
- B. The streets dedicated thereon must have remained unopened for a period of not less than five years after platting and prior to March 12, 1909.
- C. The plat must have been outside the limits of a corporate city at the time of platting and for the entire five-year period during which the streets remained unopened.

In simple cases, the vacation of a street causes the adjacent half of the street to attach to the abutting ownership between the side lines of the property projected to the center of the street. For complicated intersections, as with diagonal streets, the area which attaches to each lot becomes very controversial and may even result in some portions remaining with the original plattor, or even “no man’s land” (203 Wn. 331). The best language to use in a description which includes portions of vacated streets or alleys falling in this category is: “. . . together with that portion of vacated street attaching thereto by operation of law.”

An additional point of importance in right of way work, is that since June 9, 1949 (Laws of 1949, Chapter 14), a city or town may retain an easement for utilities within the vacated streets or alleys. This could take the form of reserving the right to continue the occupation and maintenance of existing utility facilities, or may even reserve the right to grant future easements and franchises within the area. Further, since June 12, 1975 (Laws of 1975, Chapter 22), counties may retain easement rights for the construction, repair, and maintenance of public utilities and services whenever a county road, or portion thereof, is vacated. The public utility must be authorized or physically located on the land being vacated prior to the time the county, by resolution, authorizes said land to be vacated. The legislative body is restricted from conveying such easement to any public utility, but may convey a franchise to a public utility.

Formal vacation of streets and roads outside the limits of cities is accomplished by order of the Board of County Commissioners (RCW 35.79). Within cities, it is accomplished by ordinance (RCW 36.87).

## **9-9.8 Title Problems**

### **9-9.8.1 Overlaps and Gaps**

From various causes, such as faulty conveyancing or surveying, we frequently find titles which overlap each other, or where a hiatus (gap) has been created between two ownerships. While the solution of this problem can be complex as between the parties, it is relatively simple to handle as far as acquisition of the highway right of way is concerned.

In the case of the overlap, particularly where the area involved is small and not of high value, the right of way deeds should be so drawn that the controversial strip is included in the deeds secured from all parties having an apparent interest. The matter of compensation can usually be resolved by payment of 50 percent of the value of the overlap area to each party (presuming only two parties have claims on the area).

In the event of a hiatus, some weight can be given to physical boundary markers (as fences, rock walls, etc.) which might show that the party on one side or the other of the gap is claiming possession. This is especially true where the boundary marker has been recognized as such and acquiesced to by the neighbor for a period of ten years or longer.

In the event that there are no physical boundary indications, or if the area is of high value, the best procedure is to include the strip in the deeds from the owners on either side (or take a separate quitclaim deed), as well as securing the joinder of the original owner who conveyed out the two parcels and created the hiatus. In all but the most simple cases, the Region RESM (or his designee) refers the problem to the Assistant Director Title and Condemnation Program for resolution prior to final negotiation.

### **9-9.8.2 Appurtenances**

A deed not only conveys all of the lands embraced within the legal description, but also carries, without the need of specific mention, all the appurtenances and incidentals rightfully belonging to it, and which are essential to the full and perfect enjoyment of the property (29 Wn. 70, 121 Wn. 572).

It is quite commonly known that this includes buildings, fences, timber, wells, crops, etc., but there are many other interests and rights which will pass with the deed which are not so well known. Some of these are:

- A. Appurtenant easements (120 Wn. 144).
- B. The underlying title to adjoining streets, roads, and railroads (if they are easements and not fee).
- C. Ditches (72 Wn. 547).
- D. Vacated alley (52 Wn. 341).
- E. After acquired title (if Statutory Warranty, or Bargain and Sale Deed, or if Quit Claim Deed specifically includes after-acquired title clause).
- F. Title to a building lying partly outside the limits of the lands conveyed (30 Wn. 2nd 4).
- G. Rights in a party wall (Am. Jur. Party Wall 39).
- H. Water rights (54 Wn. 2nd — ).

### **9-9.9 Line Survey Descriptions**

#### **9-9.9.1 General**

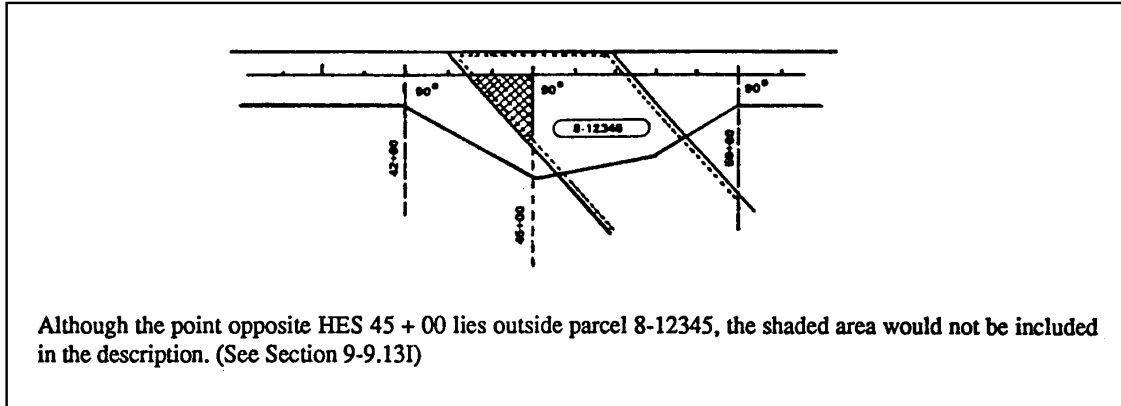
- A. In a total acquisition, the only property descriptions on the instrument is the parcel description.
- B. In a partial acquisition, the instrument includes both a description of the acquisition portion and the parcel description.
- C. In the case of a partial acquisition for roadway purposes, the state normally employs a “line survey description” in which the portion to be acquired is described in its relation to the highway project engineering data “over and across” the parcel description. All call-outs of Highway Engineer’s Stations (HES) must be preceded by a proper line survey identification; e.g., LL, LR, A12. Example:  
 “. . . at a point opposite HES LR 250+00 on the LR line survey of . . .”
- D. Upon demand by a grantor having substantial real estate holdings (usually a corporate body), a metes and bounds description of the acquisition is drawn by the Region RESM in coordination with the Assistant Director Title and Condemnation Program. The Region RESM initiates action to have the appropriate metes and bounds incorporated on the Right of Way Plan.
- E. All engineering data upon which any acquisition description is based appears on the approved plan of the project (i.e., the *Right of Way Plan* or the *Sundry Site Plan*).
- F. The sample descriptions cited in Section 9-9.13 are used as models for drafting of property descriptions for acquisition purposes.

#### **9-9.9.2 Acquisition Portion**

The following special rules apply to “line survey” acquisition descriptions:

- A. The word “opposite” properly means, “at right angles to” when in reference to a determined point (HES) on an established line (line survey) whether the established line is straight or a curve. When measured “opposite” an established curved line, the measurement is along the radius of such curve.

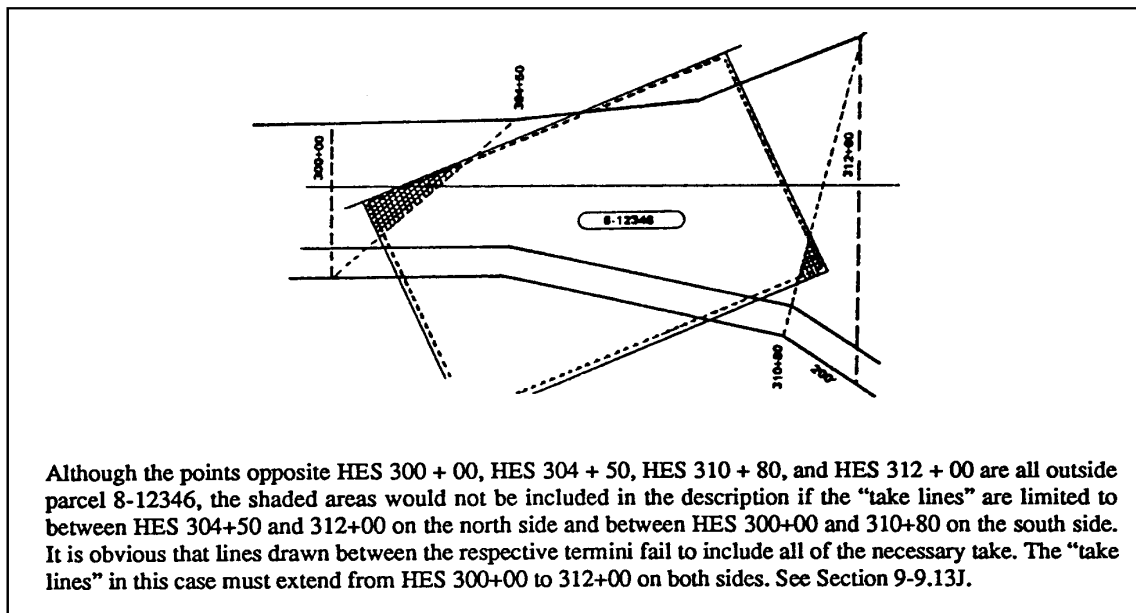
- B. The term “when measured at right angles to and/or radially from” is properly used when the distance measured is from an established line without reference to a point on the established line.
- C. A line which is parallel with an established line follows all the sinuosities of the established line and remains the stated distance from the established line.
- D. If that portion of a parcel which is to be acquired lies in a given direction from a described line, perpendiculars to the reference line drawn from the ends of the described line, must include all of the portion of the parcel which is to be acquired (see Figure 9-9.9.2D).



#### Acquisition Portion (Partial Acquisition) (Example)

Figure 9-9.9.2D

- E. If that portion of a parcel which is to be acquired lies between two lines, lines drawn to connect the ends of the two described lines must lie beyond all of that portion of the parcel to be acquired (see Figure 9-9.9.2E).



#### Acquisition Portion (Partial Acquisition) (Example)

Figure 9-9.9.2E

- F. The ends of a strip which are contiguous to a right of way are closed by lines which are described as being perpendicular to the highway line survey (see Figures 9-9.13C and D), or by using a metes and bounds description.

- G. In a metes and bounds description (see Figure 9-9.13K and L), the perimeter of a tract of land is described by:
  - 1. Starting at a definitely known (i.e., monumented) point.
  - 2. Stating bearings and distances of a line or lines from the monumented point to a point on the boundary of the tract (i.e., the “true point of beginning”).
  - 3. Stating bearings and distances for each successive boundary line of the tract. The use of “more or less” following the distance will prevent overlaps or gaps but should not be used haphazardly. It is usually used with the last distance call to be sure of closure as in Figure 9-9.13L; it may be used elsewhere only when another element (monument fixes the point without regard to the actual distance (as in Figure 9-9.13K).
  - 4. Returning (closing) at the “true point of beginning.”
- H. When referring to a section corner or to a quarter corner, reference is made only to the section in which lies the point of beginning of the parcel to be described.
- I. The first reference made in a description to a section includes the Township (and its North/South identification number) and Range (and its identification number East or West of the Willamette Meridian). Thereafter, reference is made only to “said section.”
- J. Reference in a description to a right of way plan title is made at the first mention of any highway project. Viz.: “Beginning at a point on the “X” Line survey of SR No. (plan title in full).” Thereafter, reference may be made by stating “said highway” (see Section 9-5).
- K. In the use of the word “said”: No similar item can intervene between the item and references to it in the description. Thus, if two line surveys are involved in a description, all references to the “said line survey” which refer to the first line survey should precede any mention of the second line survey. If an intervention must occur, the next reference to the first survey line must repeat the identification of the first line survey. “Said (*noun*)” always refers to the last previous use of that noun *and* its descriptive modifiers.
- L. Unnecessary wordiness is avoided. E.g., “To wit”; “thence run” or “thence running”; stating “said Township and Range” after each mention of a section; “distant” or “a distance of” (but see M, below); etc.
- M. The words “a distance of” are used only to separate two sets of figures. E.g., “189+24 254.25 feet” should be written “189+24 a distance of 254.25 feet.”
- N. The following are always spelled out:
  - 1. The word “feet.”
  - 2. Reference to subdivisions of a section (northwest quarter) and directions (northerly).
- O. Symbols (‘ for feet) or abbreviations (NW) (Nly) are avoided, except that bearings are shown as follows: North 1° 34’ 27” East.
- P. “Beginning” is preferred to “commencing” (archaic) and “according to plat” is preferable to “as per plat.”
- Q. When describing strips of land as being certain widths on each side of a survey line, the term “on each side” is used only when the widths are the same. *Do not* use the term “on either side.”

- R. If reference to line survey stationing appears more than once in a description, the following statement may be used at the first reference: "Highway Engineer's Station (hereinafter referred to as HES)." Thereafter, the abbreviation "HES" may be used. When two lines are described as the boundaries of the acquisition description, they should both proceed in the same direction (preferably in the direction of increasing HES numbers).
- S. A description copied from a tax statement or a tax receipt is not acceptable. Further, the Assessor's tax lot number (or description) is not normally an acceptable description.
- T. The term "Parcel A type description" refers to a method of acquisition description in which the acquisition portion is separate and distinct from the parcel portion of the description. The acquisition portion includes the phrase "all that portion of the following described Parcel A lying . . .", and is followed by the whole parcel description as contained in the PC and identified in the instrument as "PARCEL A:." The use of "A" is arbitrary and may be any other letter of the alphabet, but no letter is used more than once in any given instrument. (See Section 9-9.13 below for circumstances in which a Parcel A type description is appropriate.)

### **9-9.9.3 Parcel Description**

- A. In the case of a total acquisition, the legal description of the grantor's property is given exactly as it appears in the title report; except that the Acquisition Agent is authorized to change all dimensional units (e.g., rods) to feet; and, with the approval of the Region RESM may make any changes in the PC's description which are necessary to achieve clarity or simplicity. The format for descriptions is given in Section 9-1.222D. If a vacated street or road is included, see Section 9-9.4.
- B. In the case of a partial acquisition, either:
  - 1. The parcel description is inserted as a Parcel "A" type of description following the description of the acquisition portion (the line survey description or a second tract description as in Figure 9-9.13L).
  - 2. The parcel description is included within the acquisition description when the parcel description is very short and the acquisition description is relatively simple as in Figure 9-9.13E.
- C. A Parcel "A" description too long for a preprinted form may be typed and appended as an "EXHIBIT" on a separate, 8½" x 11" sheet of white bond paper. In the space on the preprinted form in which such description would otherwise appear is inserted the reference, binding the exhibit to the instrument (see Section 9-17.4).
- D. Following are those situations in which the Parcel "A" type of description is normally used:
  - 1. The parcel is described by metes and bounds.
  - 2. The parcel description contains an exception.
  - 3. The parcel description is a complicated portion of a subdivision of a section or of a larger tract or lot. E.g.; "That portion of the south 200 feet of the north 350 feet of the west 147 feet of the east 177 feet of Tract 19 lying . . ."
  - 4. The parcel lies in three or more 40-acre subdivisions of a section
- E. There are often cases in which more than one taking is required from a single ownership and/or where more than one parcel is described in the PC, with takes required from more than one such parcel (see Figure 9-9.13G).

1. Multiple takings in a single instrument are identified as “Tract I,” “Tract II,” etc., and are used in the following situations:
  - a. Takings which are separated from each other, although taken from a single PC parcel.
  - b. Takings in which the acquisition portion of the description would be so complicated that greater clarity can be achieved by breaking it into two or more parts.
2. Multiple PC parcels are identified in “Parcel A type descriptions” as “Parcel A,” “Parcel B,” etc.
3. Examples:
 

“Tract I: All that portion of the following described Parcel A lying . . .”

“Tract II: All that portion of the following described Parcel A (B) lying . . .”

#### **9-9.10 County Roads Acquired**

Conveyances from the counties for all roads within a given highway project contain adaptations from the following property description:

“. . . All County Road rights of way, together with all appurtenances thereto, located within . . . “

#### **9-9.11 Exchange Agreement**

The exact description used on the deed from the state may vary somewhat in detail from the description used in the *Exchange Agreement* (Form RES 322). Care is exercised to provide an accurate description in the *Exchange Agreement* based on conventional survey ties, on plats or on survey line ties and distances shown on the appropriate Project Plan.

#### **9-9.12 Vacated Street or Road**

If the PC or a court determination attaches a vacated street or road (or portion thereof) to the parcel description, include in the parcel description appropriate language from the PC to cover the vacation, or adapt the following:

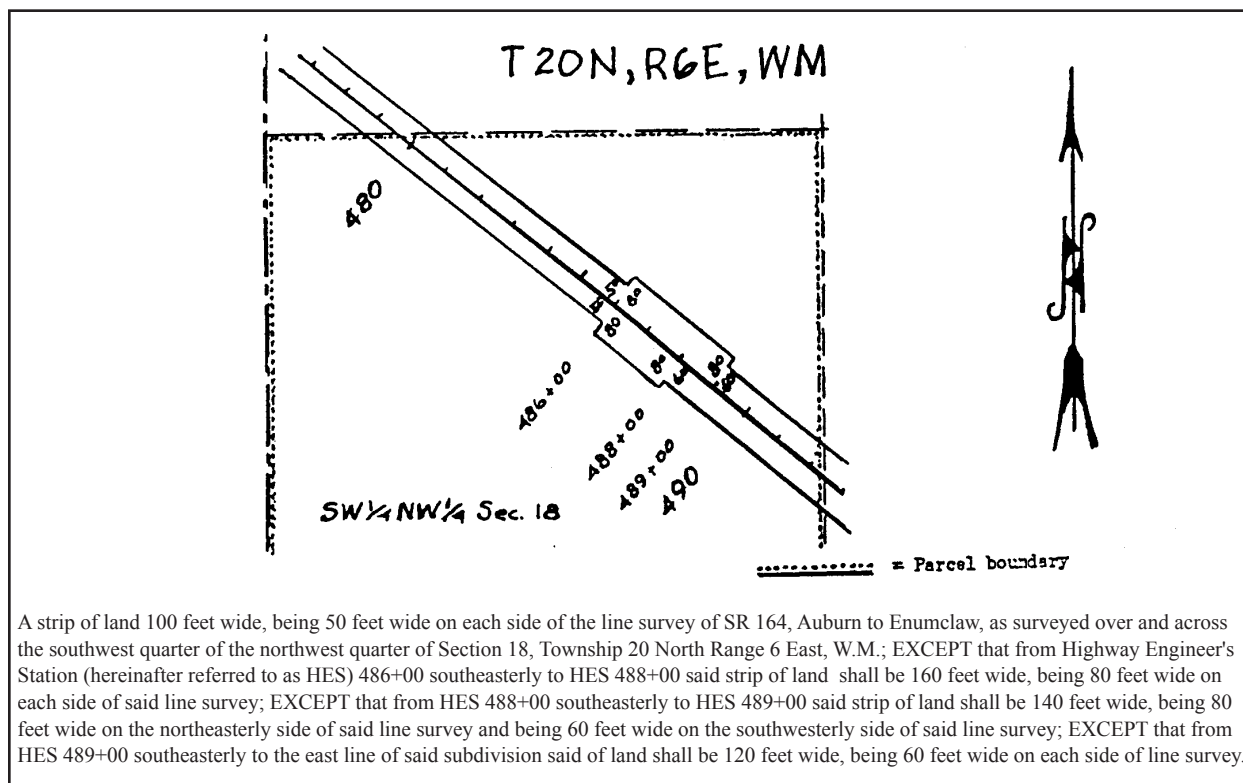
“. . . together with that portion of vacated (*name of street*) attaching thereto by operation of law . . . “

#### **9-9.13 Sample Descriptions**

The following examples are used to show type descriptions most frequently occurring.

##### **A. Line Survey Strip — Varying Widths By Exception**

When the major portion of a strip-type take is of constant width (same or different on each side), the strip is described throughout its entire length as being of that constant width, with minor differences shown as exceptions, Figure 9-9.13A. Compare with Figure 9-9.13B. The Figure 9-9.13A description can be written in many different forms, but none will be as concise as the one here given.

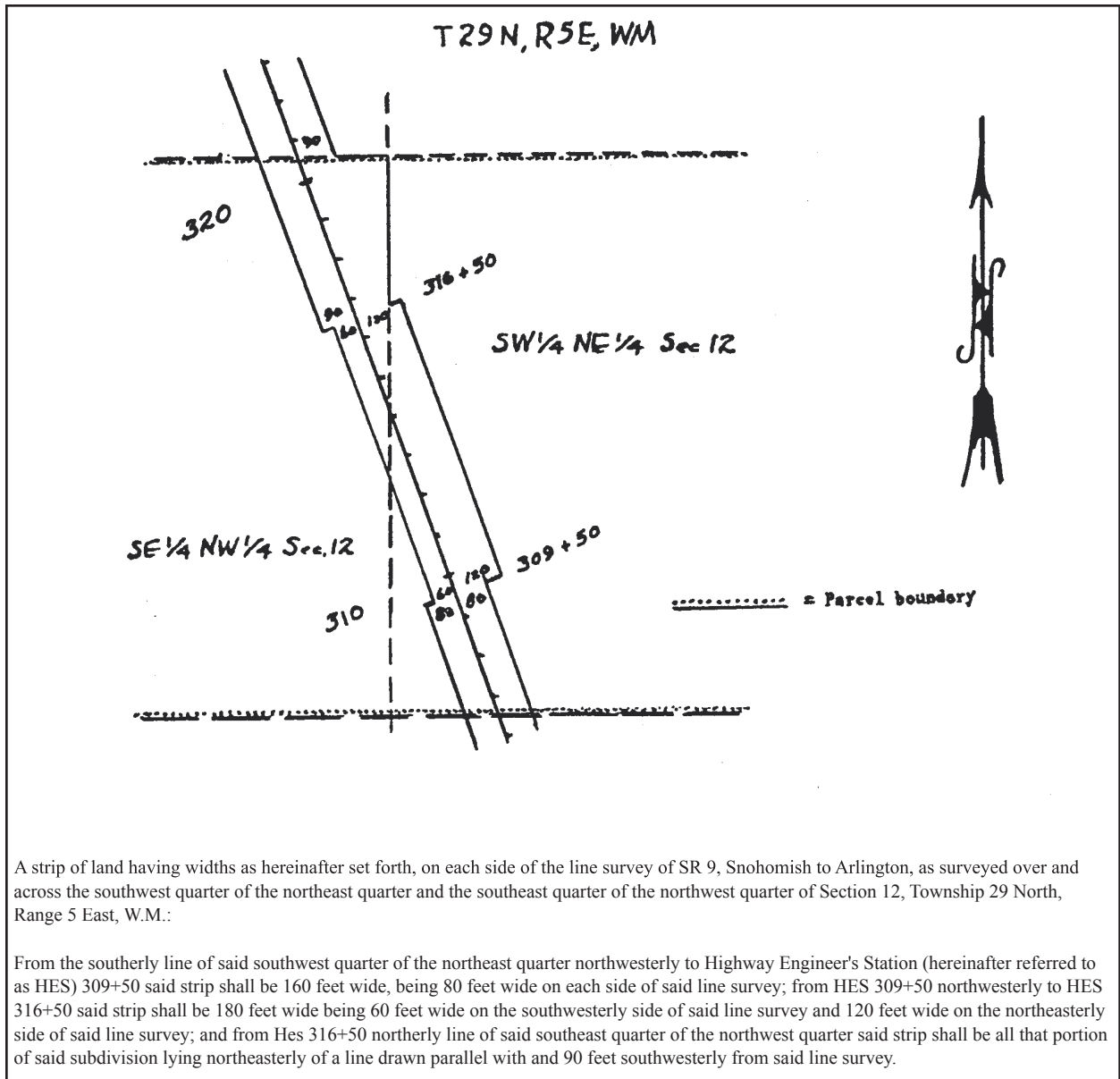


### **Line Survey Strip — Varying Widths by Exception (Example)**

*Figure 9-9.13A*

#### **B. Line Survey Strip by Varying Widths**

Where there is no major position of a strip-type description which is of a constant width, the widths are described in succession from one side of the ownership to the other as in Figure 9-9.13B.

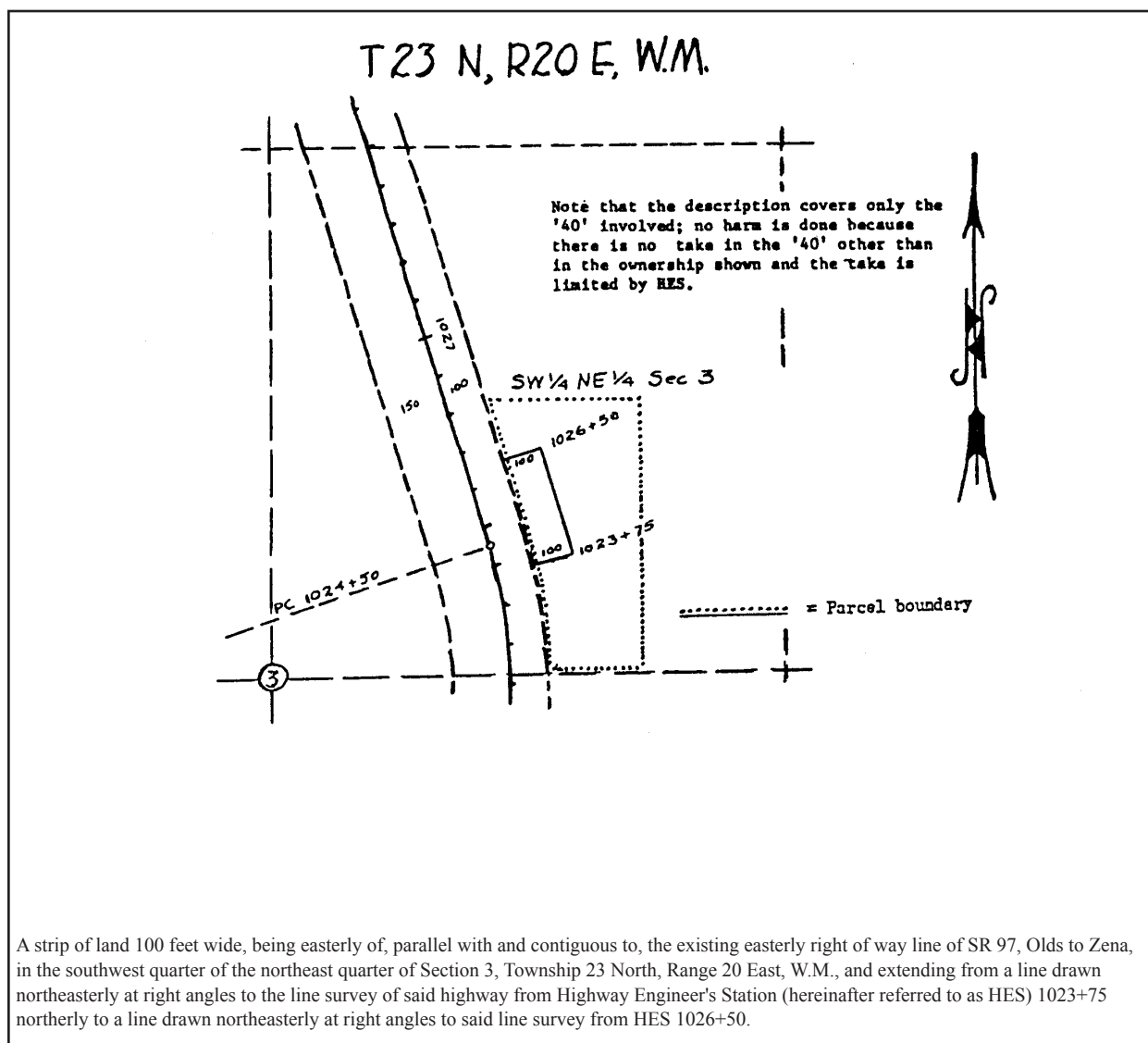


### **Line Survey Strip by Varying Widths (Example)**

**Figure 9-9.13B**

#### **C. Additional Strip — Uniform Width Figure**

Required strips abutting upon an existing right of way line are described as being on the proper directional side of the existing right of way, and parallel with and contiguous to the existing project by full SR number and title, as in Figure 9-9.13C.

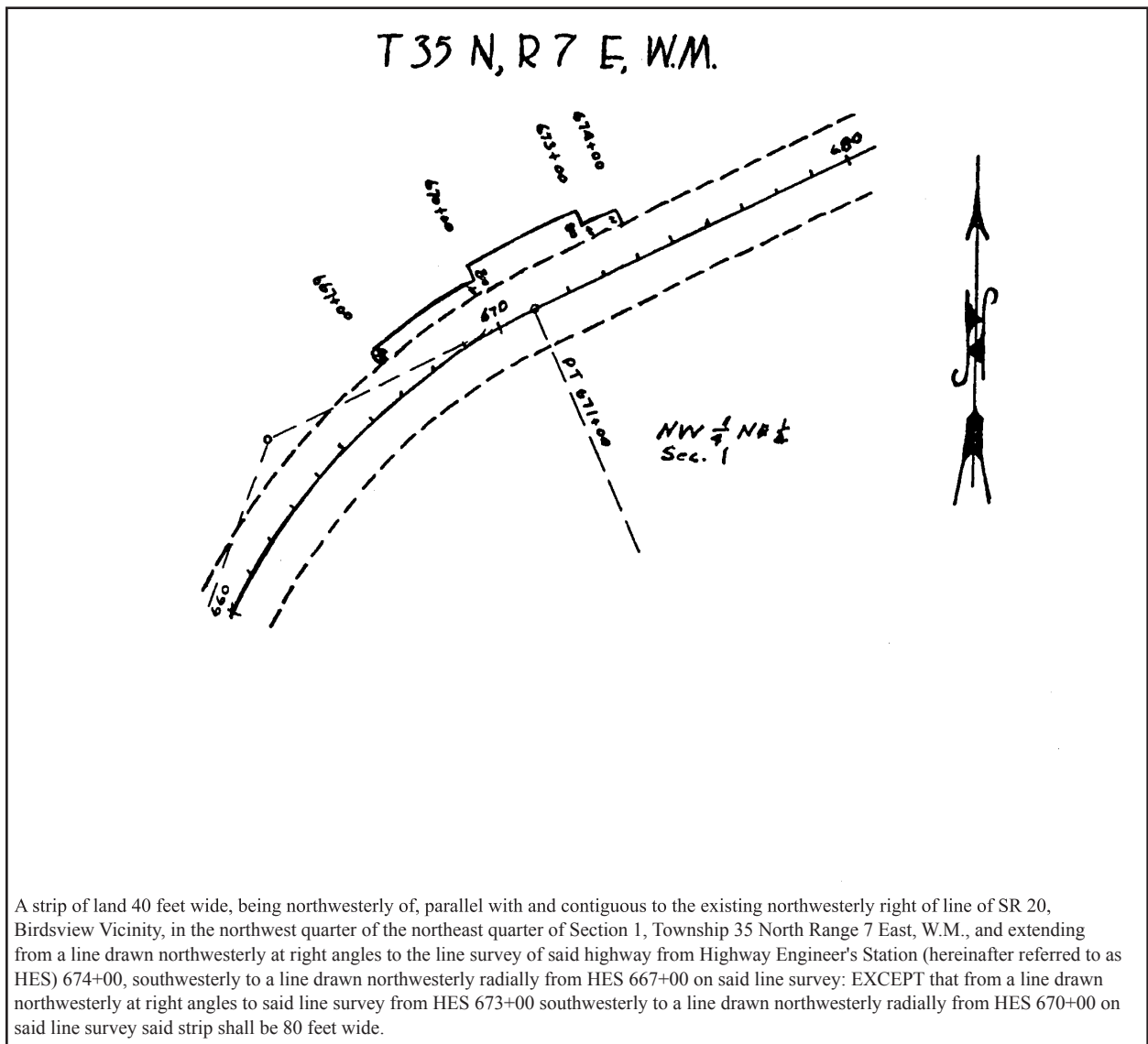


### Additional Strip — Uniform Width (Example)

Figure 9-9.13C

#### D. Additional Strip — Varying Widths

Figure 9-9.13D illustrates a more complicated additional strip. Note the relationship of this description to that contained in Figure 9-9.13A.



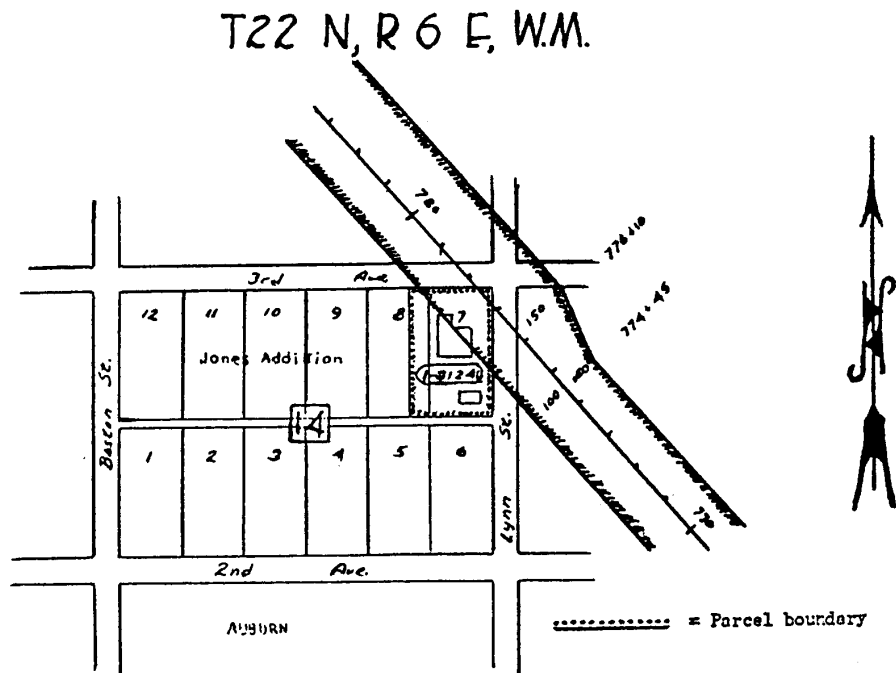
### Additional Strip — Varying Widths (Example)

Figure 9-9.13D

#### E. Straight Portion Off Corner or Side of Lot and Block Site

Where an ownership lies entirely to one side of the alignment, all of the parcel is taken that lies within the alignment by merely using the proper direction from the right of way line that traverses the parcel. Figure 9-9.13E.

(Note: The ownership lines show this ownership to include Lot 7 and a small portion of Lot 8. Since there is no take from the rest of Lot 8, no harm is done in specifying Lot 8 as a whole.)



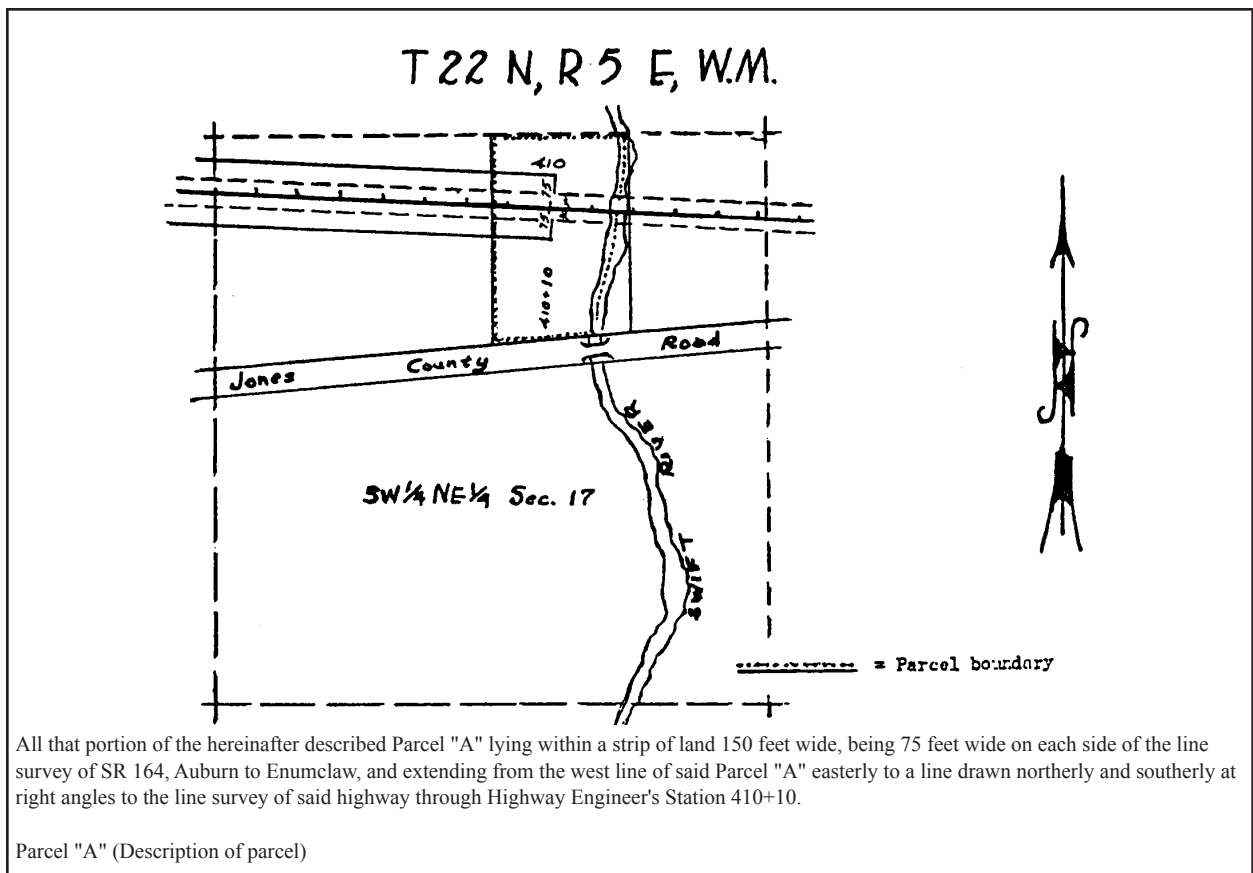
All that portion of lots 7 and 8, Block 14, of the Jones Addition to the city of Auburn lying northeasterly of a line drawn parallel with and 100 feet southwesterly from the line survey of SR 164, Auburn to Enumclaw.

### Straight Portion off Corner or Side of Lot and Block Site (Example)

Figure 9-9.13E

#### F. Strip Out of Parcel "A"

The ownership in Figure 9-9.13F appears to be a metes and bounds description or to contain an exception; hence it is stated following the acquisition portion of the description. Note that the description appears to "re-take" the existing right of way, but such right of way is probably an exception in the PC parcel description.



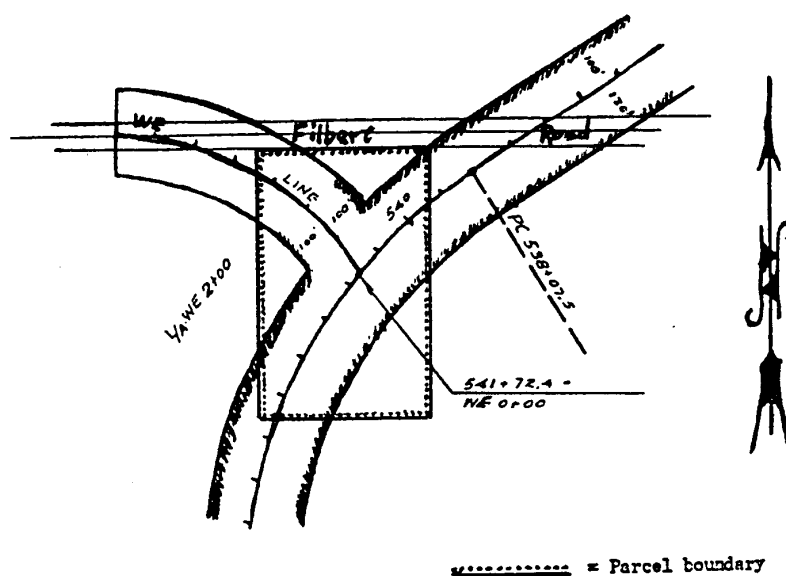
### Strip Out of Parcel "A" (Example)

Figure 9-9.13F

#### G. Two Line Surveys — Tract I and II Out of Parcel "A"

When a take involves two line surveys it is often convenient to describe two separate takes — one based on one line survey, and the second based on the other line survey. In Figure 9-9.13G, note that the Tract II description excludes any portion lying within Tract I even though the basic strip extends to the line survey used in Tract I.

T39 N, R 2 E, W.M.



Tract I:

All that portion of the hereinafter described Parcel "A" lying within a strip of land 220 feet wide, being 100 feet wide, when measured radially, on the northwesterly side of the line survey of SR 5, Ferndale to Custer, and 120 feet wide, when measured radially, on the southeasterly side of said line survey.

Tract II:

All that portion of the hereinafter described Parcel "A" lying within a strip of land 200 feet wide, being 100 feet wide, when measured radially, on each side of the WE Line, line survey of said highway, and lying northwesterly of the above described Tract I.

Parcel "A": (Description of parcel)

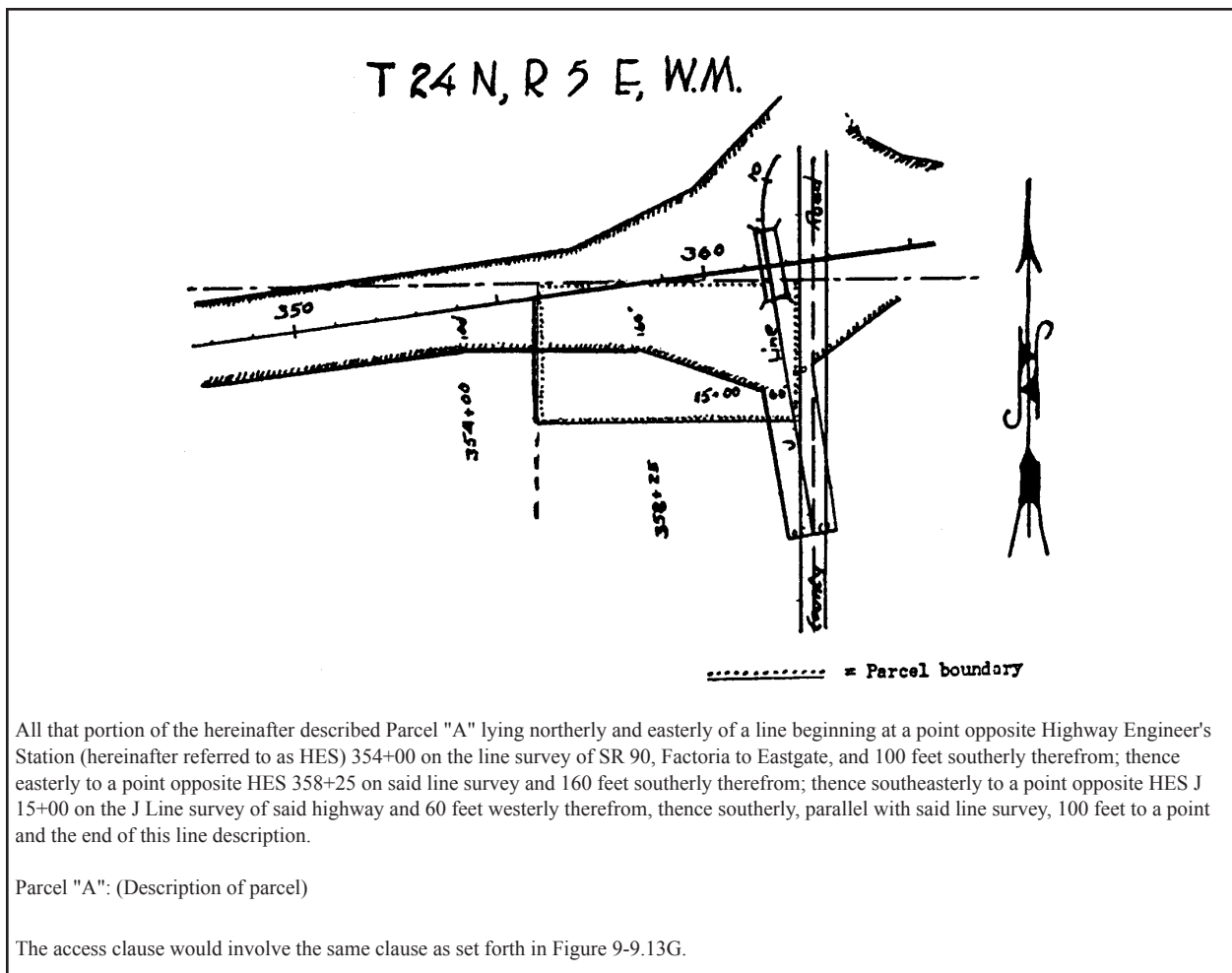
The access clause would be a composite of the clauses stated in Sections 9-10.1.2 (basic) and 9-10.1.5.1 (reservation by highway connection to the WB Line northwesterly of HES WE 2+00), plus one of the clauses stated in Section 10-10.6 depending on what is existing.

### Two Line Surveys — Tract I and II Out of Parcel "A" (Example)

Figure 9-9.13G

#### H. Two Line Surveys — Line Description Off Corner or Side of Parcel "A"

Two line surveys do not necessarily make a two tract description. In Figure 9-9.13H, the relationship of the two lines survey to the take makes a two tract description unnecessary, indeed difficult, because the last segment of the take-line description depends on stationing on the second line survey. Note that the distance call of that same segment is merely enough to get outside the ownership (without apparent cover of the easterly boundary because the take is described in terms of both northerly and easterly of the take-line).

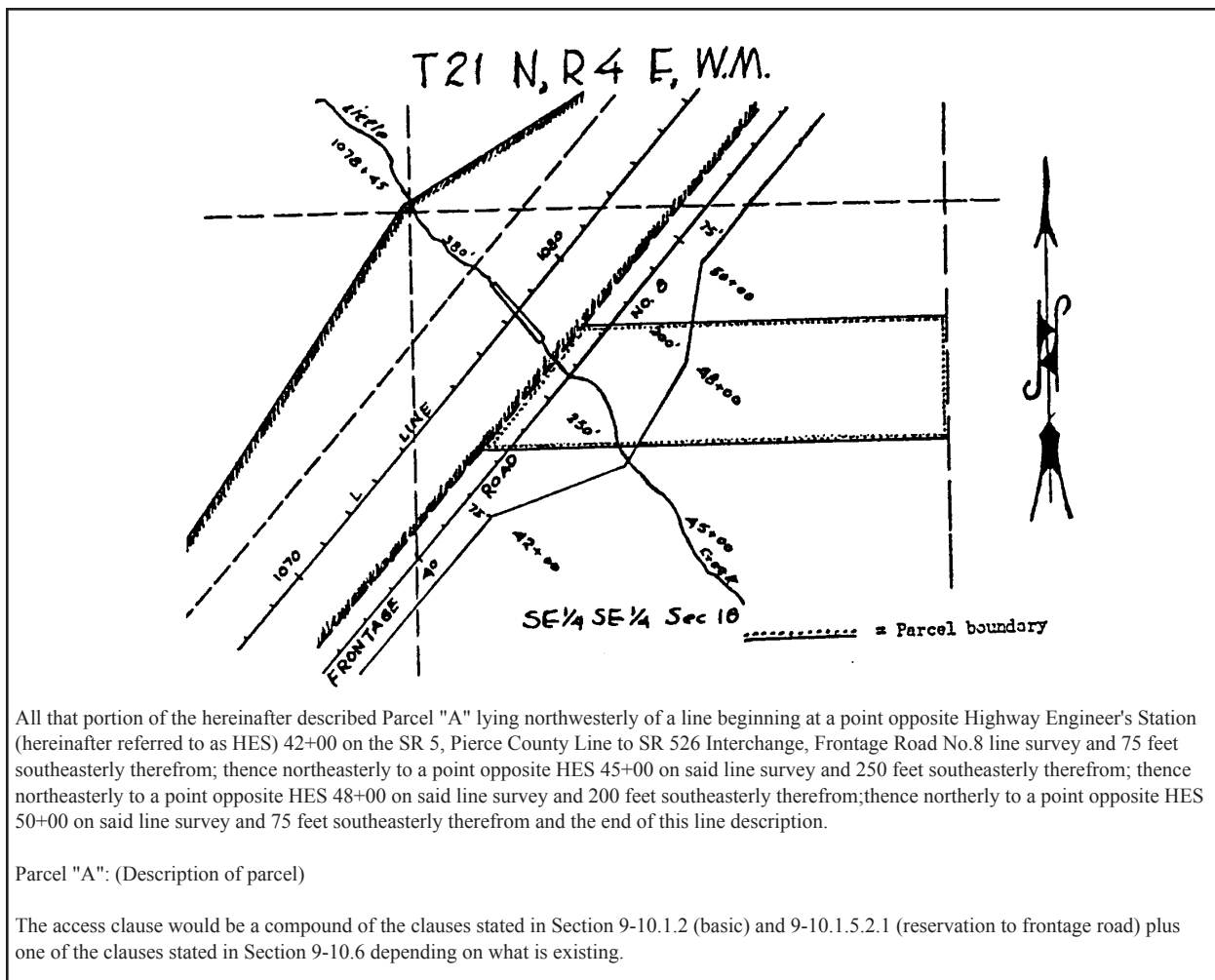


## Two Line Surveys — Line Description off Corner or Side of Parcel "A" (Example)

Figure 9-9.13H

### I. Line Description Off Corner or Side of Parcel "A"

Figure 9-9.13I illustrates the same principles as Figure 9-9.13E except that the take-line is not a straight line and is based on the frontage road survey line instead of a mainline line survey. Note that this description cannot begin at a point opposite HES 45+00 (on the FR 8 survey line) for a line projected northwesterly through that point would miss some of the take southwest of Little Creek.

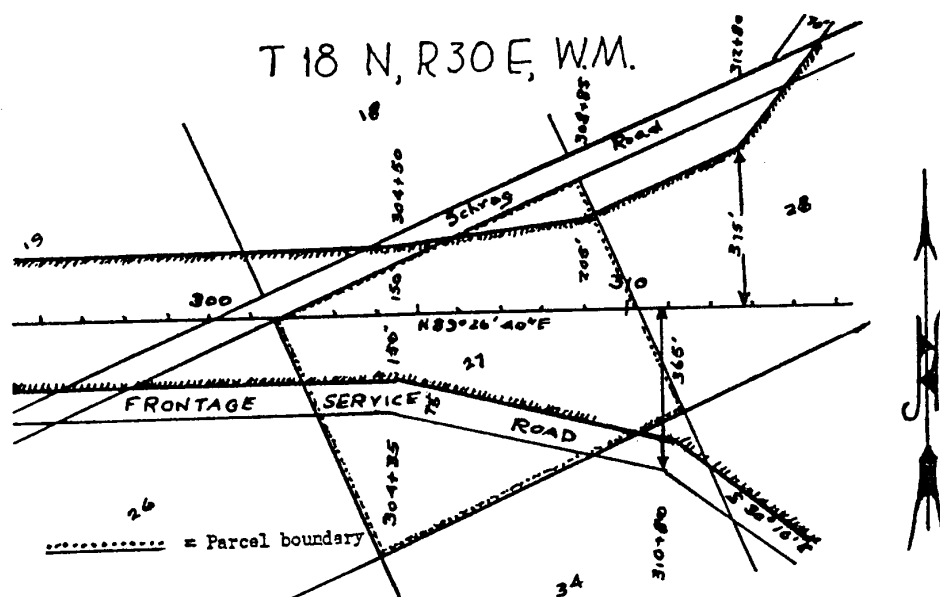


### Line Description off Corner or Side of Parcel "A" (Example)

Figure 9-9.13I

#### J. Strip Between Line 1 and 2 Out of Parcel "A"

Figure 9-9.13J is further illustration of the necessity of extending take-lines far enough to include all of the required property. Note that a line from HES 310+80 and 365 feet southerly therefrom to HES 312+80 and 375 feet northerly therefrom fails to cover the extreme southeasterly corner of the ownership. This is avoided by extending Line 1 some 200 feet southerly.



All that portion of the hereinafter described Parcel "A" lying between the following described Lines 1 and 2:

Line 1: Beginning at a point opposite Highway Engineer's Station (hereinafter referred to as HES) 300+00 on the line survey of SR 90, Moses Lake East and 225 feet southerly therefrom; thence easterly parallel with said line survey to a point opposite HES 304+35; thence southeasterly to a point opposite HES 310+80 on said line survey and 365 feet southerly therefrom; thence South 30° 10' East 200 feet to a point and the end of this line description.

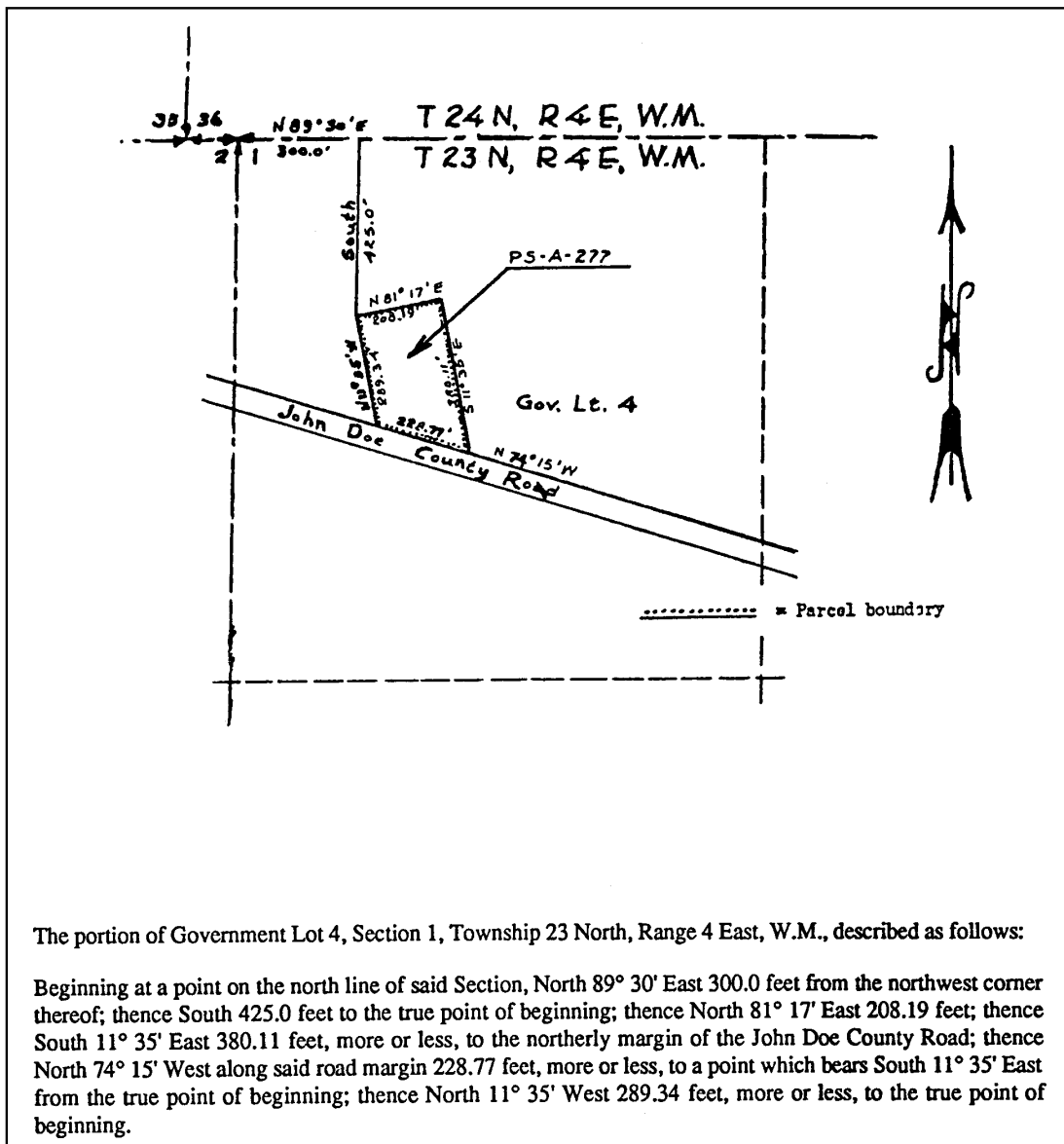
Line 2: Beginning a point opposite HES 300+00 on said line survey and 150 feet northerly therefrom; thence easterly parallel with said line survey to a point opposite HES 304+50 on said survey line; thence easterly to a point opposite HES 308+85 on said line survey and 205 feet northerly therefrom; thence northeasterly to a point opposite HES 312+80 on said line survey and 375 feet northerly therefrom and the end of this line description.

### Strip Between Line 1 and Line 2 Out of Parcel "A" (Example)

**Figure 9-9.13J**

## K. Metes and Bounds Site

Figure 9-9.13K illustrates a total take by a metes and bounds description. Note that the phrase “more or less” follows three of the distance calls but each are terminated by a monument.

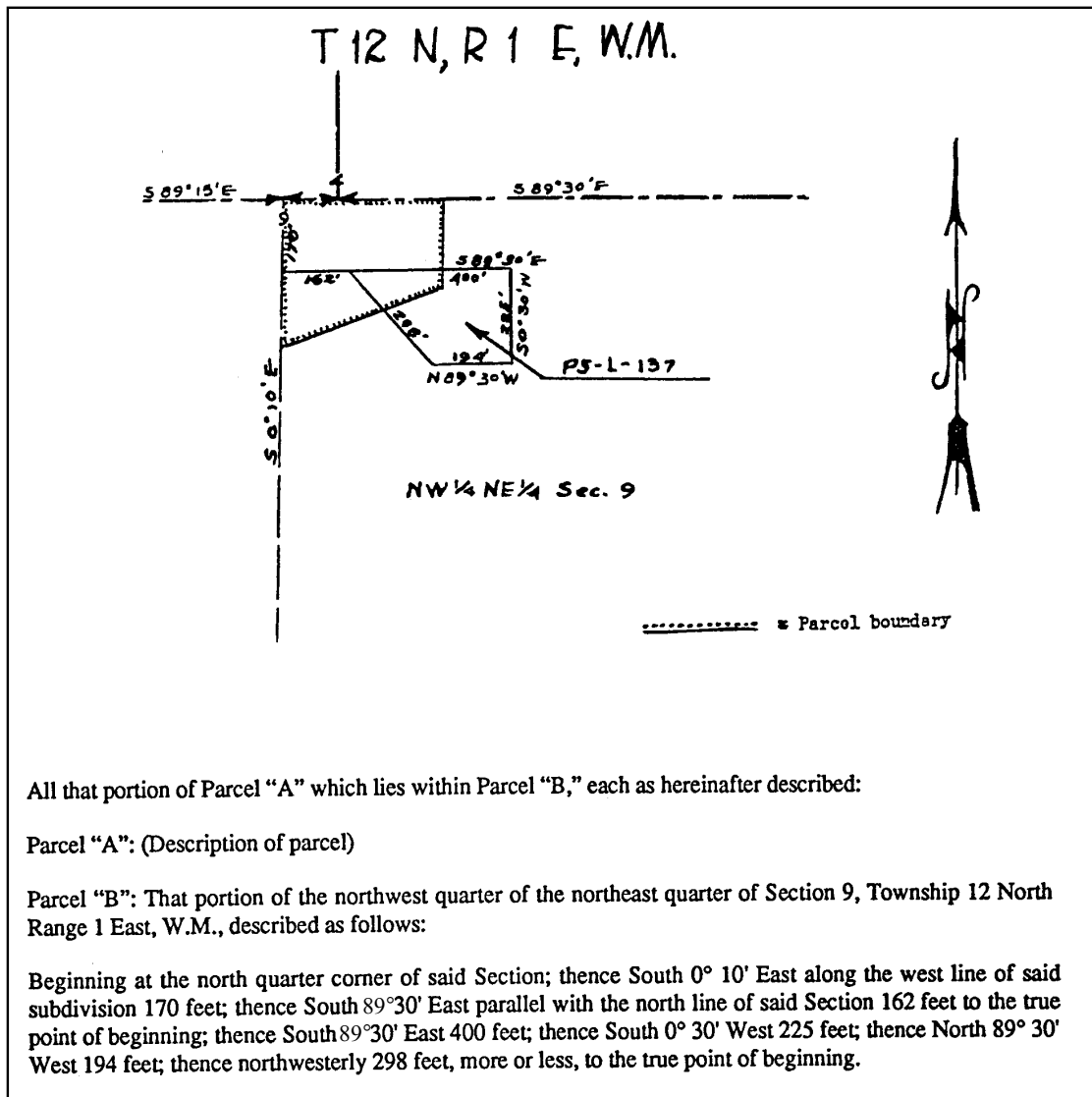


### Metes and Bounds Site (Example)

Figure 9-9.13K

#### L. Parcel "B" Metes and Bounds Site Out of Parcel "A"

Figure 9-9.13L illustrates an unusual use of the "Parcel B" phraseology. Here it is used to describe the take boundaries, whereas Parcel A is the ownership. This is a convenient method of description when there are no ties at the boundary intersections. Note that the phrase "more or less" follows only the final distance call, thus insuring closure of the description whether the actual distance is 275 or 305 feet.



### Parcel "B" Metes and Bounds Site Out of Parcel "A" (Example)

Figure 9-9.13L

## **9-10 Miscellaneous Clauses**

### **9-10.1 Limited Access**

#### **9-10.1.1 Access Rights Only Conveyances**

The appropriate language is included in the conveyance clause on the preprinted forms in which “Access Rights Only” are being conveyed. If there are exceptions to full control of access, the appropriate exception clause is also inserted as explained in Section 9-10.1.5 et seq.

#### **9-10.1.2 Land and Access Rights Conveyances**

The access control clause follows the property description clause in a conveyance of a partial acquisition, adapting the following:

“Also, the grantors herein convey and grant to the state of Washington all rights of ingress and egress (including all existing, future or potential easements of access, light, view and air) to, from and between (full, official name of project) and the remainder of said (tract, lot or parcel “A”).”

**Note:** If an access reservation is provided, continue with the appropriate clause in Section 9-10.1.5 et seq.

#### **9-10.1.3 Release of Lessee’s Interest**

The access control clause agrees with the language of the conveyance from the owner, adapting the following:

“Also, said lessee hereby releases from the effect of said lease, all rights of ingress and egress (etc., as in Section 9-10.1.2) . . . and the remainder of the real property described in said (lease) (Parcel A).”

#### **9-10.1.4 Release of Mortgagee’s or Beneficiary’s (Deed of Trust) Interest**

The access control clause agrees with the language of the conveyance from the owner, adapting the following:

“Also, said (mortgagee/trustee) hereby releases from the effect of said (mortgage/deed of trust) all rights of ingress and egress (etc., as in Section 9-10.1.2) and the remainder of the real property described in said (mortgage/deed of trust).”

#### **9-10.1.5 Access Reservation**

If the access control is modified by any “Access Note” or other feature appearing on the approved plan, such feature is specified in the instrument of conveyance or release by adding to the “Access Control Clause” (see Section 9-10.1.2 et seq.) an “Access Reservation Clause” adapted from one of the following clauses.

**Note:** The language of such clause in a partial release of lease, substitutes the words “said lessee” in place of the words “grantor” or “grantor herein.” Likewise, the word “mortgagee” is substituted in a partial release of mortgage and the word “trustee” is substituted in a partial reconveyance of a deed of trust.

##### **9-10.1.5.1 By Highway Connection**

For access specifically permitted by way of a highway connecting with an access controlled facility:

“ . . . , EXCEPT that the (grantors, lessees, mortgagees, trustee(s) herein reserve(s) for (himself) (his heirs) (its) successors or assigns, the right of reasonable access to the “ \_\_\_\_\_ ” Line connection of said Highway ( \_\_\_\_\_ erly of HES \_\_\_\_\_ + \_\_\_\_\_ said “ \_\_\_\_\_ ” Line).” Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.6 as appropriate.

#### **9-10.1.5.2 By Frontage Service Road**

##### **A. State to Construct — Now**

“ . . . , EXCEPT that as a part of the consideration of this transaction, the state agrees to construct on the right of way a frontage service road along the (easterly) side of said highway, and to which frontage service road only, the grantors, their heirs, successors or assigns reserve a right of reasonable access.” Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.6 as appropriate.

##### **B. State to Construct — Future**

“ . . . , EXCEPT that as a part of the consideration for this transaction, the state agrees to construct on its right of way at a future date, a FRONTAGE SERVICE ROAD along the (easterly) side of said highway, it being understood and agreed that the grantors herein, their heirs, successors and assigns reserve a temporary right of reasonable access . . . ” Continue with B1 or B2 below as required.

1. Direct Access to Highway. “ . . . directly to said highway until such time as said FRONTAGE SERVICE ROAD is actually constructed at which time all such temporary rights of direct access to the highway shall cease and the rights shall then be limited to the right of reasonable access to the FRONTAGE SERVICE ROAD.” (Insert description of location and/or use restrictions of temporary direct access as appropriate.) Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.06 as appropriate.
2. Other Temporary Access. When temporary access other than via a direct route to the highway is to be provided, such as allowing temporary access only to a specific other public road that is available or can be made available, insert the details as to the type, location, and any restriction of the access as stated in the design specifications. Continue with the text in Sections 9-10.1.5.3.1, 9-10.1.5.3.2, or 9-10.6 as appropriate.

#### **9-10.1.5.3 By Road Approach**

##### **A. Type “A” (Residential)**

“ . . . , EXCEPT that the state shall construct on its right of way a Type "A" off and on approach, not to exceed 30 feet in width, for the sole purpose of serving a single family residence, on the easterly side, at or near Highway Engineer’s Station (36+00), as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only.” Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

##### **B. Type “B” (Farm)**

##### **1. One Side**

“ . . . , EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width, for those uses necessary to the normal operation of a farm but not for retail marketing, on the (easterly) side, at or near

Highway Engineer's Station (36+00), as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach, only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

2. Each Side

"... , EXCEPT that the state shall construct on its right of way a Type "B" off and on approach, not to exceed 50 feet in width for those uses necessary to the normal operation of a farm but not for retail marketing, on each side of said highway, at or near Highway Engineer's Station (36+20), as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approaches the grantors, their heirs, successors and assigns, reserve the right of reasonable access for that purpose only." Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

a. Multiple Approaches — Controlled Movement

Used if the grantor has reserved road approaches on each side and traffic may not cross or make left-turning movements at grade.

"... The direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach."

b. Temporary Grade Crossing

Used if the grantor has reserved road approaches on each side without restriction on crossing or left-turning movements at grade.

"... It is understood and agreed that the state may temporarily permit the crossing of said highway at grade and free turning movements from each of said approaches. However, whenever necessary in the opinion of the Department of Transportation, all grade crossings shall cease and terminate and the direction of travel to and from each of said approaches shall be limited to the same direction as the movement of the traffic in the lane abutting said approach."

C. Type "C" (Special Use)

Used only on the instrument with the parties who are to have the right of use of such approach.

1. State to Construct

"... , EXCEPT that the state shall construct on its right of way a Type "C" off and on approach, not to exceed (\_\_\_\_\_) feet in width, for a gated approach to the grantors' well, on the (easterly) side, (northbound) only, at or near Highway Engineer's Station (\_\_\_\_\_), as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors, or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-10.1.5.3.1 and 9-10.7.

2. Owner to Construct

"... , EXCEPT that the state agrees to permit the construction on its right of way of one Type "C" off and on approach to the remainder of said Parcel "A", not to exceed (\_\_\_\_\_) feet in width, for the uses necessary to the normal operation of a farm (or whatever use is specified by the highway plan), at a point

on the (easterly) side of said highway, between Highway Engineer's Station (\_\_\_\_\_) and Highway Engineer's Station (\_\_\_\_\_), to be mutually agreed upon by the undersigned grantors, their heirs, successors or assigns and the Department of Transportation; and to which off and on approach only, the grantors, their heirs, successors or assigns reserve a right of reasonable access for that purpose only." Continue with the text in Sections 9-10.1.5.3.1 and 9-10.1.5.3.2.

D. Type "D" (Commercial Single 50 Foot Width)

Used only where Modified Access Control has been established, and further subject to provisions of WAC 252-020-090.

"... , EXCEPT that the state shall construct on its right of way a Type "D" off and on approach not to exceed 50 feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designed highway stations as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location, and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Section 9-10.1.5.3.1 and 9-10.7.

E. Type "E" (Commercial Double 30 Foot Width)

Note: This approach is to be utilized only with approval of the HQ Access and Hearing Engineer's office.

"... , EXCEPT that the state shall construct on its right of way a separated off and on approach with each opening not exceeding 30' in width, for use necessary to the normal operations of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations as shown on Sheet \_\_\_\_\_ of \_\_\_\_\_ Sheets of the hereinafter mentioned map of definite location and to which off and on approach only, the grantors, their heirs, successors or assigns, reserve a right of reasonable access for that purpose only." Continue with the text in Section 9-10.1.5.3.1 and 9-10.7.

### 9-10.1.5.3.1 Maintenance of Road Approach

"... , which approach shall be maintained between the right of way line and the shoulder line of said (highway, frontage service road of said highway, highway and/or frontage service road, "Line of said highway) by the grantors, their heirs, successors or assigns."

### 9-10.1.5.3.2 Construction Costs and Permits — Owner to Construct Approach

"Obtaining required permits from responsible agencies and the complete construction (and maintenance) costs of said approach shall be the sole responsibility of the grantors, their heirs, successors or assigns."

### 9-10.1.5.4 By Highway Structure

Used when the approved *Right of Way Plan* contains an "Access Note" which permits access under or over the travelled way by use of a highway structure — adapt the text of the "Access Note":

"... , EXCEPT that traffic movement will be permitted under the highway structures at the (insert name of bridge, etc.) between HES \_\_\_\_\_ + \_\_\_\_\_ and HES \_\_\_\_\_ + \_\_\_\_\_ as restricted clearances will permit." If appropriate, continue with the text in Sections 9-10.1.5.3.1 and 9-10.1.5.3.2.

## **9-10.2 Specific Details**

Used in each instrument (principal and supportive) involving either a partial acquisition or a reference to a recorded right of way plan. May also be used on any instrument as a courtesy.

### **9-10.2.1 One Type of Acquisition**

The cited language is used in instruments relating to conveyances of only one type; e.g., fee, easement, permit, lease, etc.

“The lands herein described contain an area of (2.5 acres, square feet) more or less, the specific details concerning all of which are to be found in that certain map of definite location now of record and on file in the office of the Secretary of Transportation at Olympia, and bearing date of approval (month, day, year), (revised) (month, day, year).”

### **9-10.2.2 Multiple Types of Acquisition**

The cited language is used in instruments relating to conveyances of combinations of fee, easement, permit, etc.

“The lands herein described in fee contain an area of (\_\_\_\_\_ acres, \_\_\_\_\_ square feet), more or less, and herein described in (easement, permit) contain an area of (\_\_\_\_\_ acres, \_\_\_\_\_ square feet) more or less, the specific details concerning all of which . . . (see Section 9-10.2.1) . . .”

## **9-10.3 Payment Authorization**

Used in instruments wherein there are multiple signatories and such parties agree to the state making payment to one of their members.

### **9-10.3.1 By Grantors to One Grantor**

“The undersigned grantors hereby authorize and instruct the state of Washington to pay the entire consideration to \_\_\_\_\_, and direct that the state voucher in payment thereof shall be executed only by said \_\_\_\_\_.”

### **9-10.3.2 By Mortgagee to Mortgagor/Beneficiary to Grantor**

Used on the (Partial Release of Mortgage/Request for Partial Reconveyance of Deed of Trust) to authorize payment to the grantor.

“The undersigned herein consents to the payment of any consideration for the lands being herein released directly to the (mortgagor/grantor), his heirs, successors or assigns.”

## **9-10.4 Improvement Straddling Right of Way Line**

Used in each case in which improvements straddle the right of way line. All improvements within the acquisition area are automatically acquired with the land as “real property.” Owners (or others) do not “retain” or purchase improvements to be removed or salvaged, but may purchase them as personal property by purchasing salvage rights. Salvage rights (sales of personalty) are transacted and documented in a separate *Fixtures and Improvements Agreement* (DOT Form 263-005).

“It is understood and agreed that the improvement(s) located partially upon the lands herein conveyed and partially upon the grantor’s remaining lands is (are) conveyed herein in its (their) entirety to the state of Washington, its agents or assigns.” Continue with text in Section 9-10.7.

### **9-10.5 Timber (Crop) Removal**

Use if timber (crops) are to be removed by the grantor:

“The grantor herein reserves the right to remove (all hay, the sugar beet crop, all standing or down timber) located (insert Right of Way centerline or other legal description of the area where timber/crop removal is permitted) at any time until (insert exact date); however, all (timber, crops) yet remaining on said lands after said date shall become the property of the state of Washington and all rights of the grantor to said (timber, crops) shall then cease and terminate.”

### **9-10.6 Road Approaches — Nonlimited Access**

Access to nonlimited access state highways is managed under the provisions of RCW 47.50.

All new or altered road approaches must be documented by permit. Region Real Estate Services staff will assist in obtaining signatures on permits as requested. We will attempt to obtain signatures on all permits on any project even though there may not be an acquisition from that particular property owner. If any owner refuses to sign, the agent should so note on the permit, leave a copy with the owner, and return the original to the region. A copy of all Road Approach Permits must be included in your acquisition files.

A record of authorized road approaches will be maintained in the State Access and Hearings Engineers Office in Olympia. The information in this computer file will be input and updated in each region office responsible for issuing the permits.

Acquisition documents will not make reference to any road approach or access rights. All information about the approach type, location, maintenance, right of entry, etc., will be in the permit. Region Real Estate Services will coordinate closely with those issuing the permits to assure the appropriate language is included in each one.

If the owner requests any additional approaches, the agent should explain the procedure established in the statute and provide whatever help is appropriate for the owner to apply. If at all possible, any request for additional or modified access should be separated from our acquisition activities.

If the owner insists on a document assuring them the state will reconstruct any existing approach, we can provide a letter but the letter should not contain any reference to a type or location.

The construction memorandum regarding road approaches may still be prepared and provide to the Project Engineer. That decision will probably vary region to region. The memorandum does not have to be sent with your acquisition file. Remember that the Project Engineer's signature on this memo DOES NOT CONSTITUTE APPROVAL OF THE APPROACH but only agreement that it will be constructed as part of the project. This memorandum is intended for internal use and should not be given to the property owner.

### **9-10.7 Construction Item**

If the instrument contains a clause requiring or potentially obligating the state to perform any nature of construction or labor on or adjacent to the grantor's remaining land, the following is inserted as part of said clause in the grantor's instrument only:

“The grantor herein further grants to the state of Washington, or its agents, the right to enter upon the grantor's remaining lands where necessary to (construct said approach, remove said improvement, remove said crop, remove said timber, etc.).”

## **9-10.8 Occupancy Clauses**

### **9-10.8.1 General**

In the absence of agreement otherwise, occupancy of unimproved real property will occur upon payment being made available to the grantor(s). No clause is required.

### **9-10.8.2 Early Occupancy**

If early occupancy is required, one of the following clauses will be used.

- A. “The undersigned hereby agree(s) to surrender occupancy of the lands and/or rights herein conveyed, on the date of acceptance of this instrument by the state.”

In rare instances it may be necessary to gain immediate occupancy. In those cases, the following may be used:

- B. “The undersigned hereby agree(s) to surrender immediate occupancy of the lands and/or rights herein conveyed.”

### **9-10.9 Reserved**

### **9-10.10 Release of Damages**

The following are examples of clauses which are to be inserted between the words:

“. . . by reason of” and the words: “due to the . . . “ on the *Release of Damages* (Form RES-315) to identify the specific damages for which the state of Washington is making a settlement.

**Note:** Since these clauses are inserted in the middle of a sentence, the clauses do not require capitalization or final punctuation.

#### **9-10.10.1 Fencing**

The following clause releases the state from the obligation to erect and maintain fencing:

“. . . its obligation to erect and maintain fencing along the right of way line contiguous to the hereinafter described property . . . “

#### **9-10.10.2 Water Systems**

The following clauses release the state from its obligations under a *Well Agreement* (Form RES-313):

“. . . the loss of an existing water system and the construction of a replacement water system . . . “

Also insert the following clause before the Delivery Clause (see Section 9-12):

“The owners of record of the herein above described lands, for themselves, their heirs, successors and assigns, hereby release the state of Washington from all responsibility and obligation imposed or implied by that certain Well Agreement \_\_\_\_\_, between the parties hereto, and hereby declare and acknowledge said Agreement to have been fulfilled and terminated.”

### **9-10.11 Mineral Rights Reservation**

Used in some instruments of conveyance to the state (deeds), and in some instruments releasing mineral rights.

“It is understood and agreed that all mineral, coal, oil, ores and gases below the surface of the lands conveyed by this instrument and hereinbefore described, are hereby reserved unto the grantors, their successors and assigns; EXCEPT, however, that in the exploration, development, excavation, mining or removing of same, the surface of said lands shall not be occupied or used, the exercise of said rights shall not injure or damage in any manner the highway or highways to be built thereon, increase the cost of maintenance thereof, or interfere with the primary use of said lands and rights of way by the state of Washington, its successors or assigns for road, street, highway or other purposes, or franchises granted across, along, or beneath the surface of said highways, nor shall the grantors, their successors or assigns, do any exploration, development, excavation or mining beneath the surface of the lands hereinabove conveyed within a vertical depth of 500 feet below said surface until the said grantors, their successors or assigns have a plan for such exploration, development, excavation or mining approved by the Secretary of Transportation of the state of Washington, or his successors and assigns, determining that such plan will not be injurious to the primary use of the surface.”

#### **9-10.12 Slope Easement, Termination Of**

Used to indicate the method of termination of a slope easement. This clause may be used only if the slope easement does not include reservation of sidewalk areas, utility rights of way, etc.

“It is understood and agreed that, in the event the grantor, his heirs, or assigns, shall excavate and/or place an embankment upon the area covered by this slope easement to the level of the grade of the above-mentioned highway abutting thereon, all rights of the grantee herein shall cease and terminate.”

#### **9-10.13 Easement for Transfer**

Used only when the easement is to be transferred to another party; e.g., a slope easement for a frontage service road which is to be relinquished to the county. “It being understood and agreed that, upon completion of construction, the easement rights granted herein are to be transferred to \_\_\_\_\_ by an appropriate instrument to be placed of record and that thereafter the rights of the state shall cease and terminate.”

#### **9-10.14 Reversion**

Used only upon demand by major land owners maintaining substantial real property holdings that traditionally have conveyed only easements, provided that the acquisition compensation reflects the reversion right, and only with prior approval of DRES.

##### **9-10.14.1 Reversion Clause**

Upon abandonment of the lands conveyed herein, all of the state’s right, title and interest in and to said lands shall revert to the grantors, their heirs, successors, or assigns; subject to any permits or franchises for public or private utilities.

#### **9-10.15 Right of First Refusal**

Used only upon demand by grantor(s) with prior approval of the DRES.

##### **9-10.15.1 First Refusal Clause**

Upon determination by WSDOT that all or any portion of the lands herein conveyed are surplus to the needs of the state the grantor(s), (his, her, their) heirs, successors, or assigns shall be offered the first right to acquire said land at its then appraised value.

### **9-10.16 Donation Clause**

(My/Our) donation of (parcel number or property description) to the State of Washington is made voluntary and with full knowledge of (my/our) entitlement to receive just compensation therefore. (I/We) hereby waive the State of Washington from obtaining an appraisal of the acquired property.

### **9-11 Reserved**

### **9-12 Delivery Clause**

The following delivery clause is entered in each instrument that is to be accepted and approved, just above the Instrument Date and the Signatures:

“It is understood and agreed that the delivery of this (deed, etc.) is hereby tendered and that the terms and obligations hereof shall not become binding upon the state of Washington unless and until accepted and approved hereon in writing for the state of Washington, Department of Transportation, by the Director, Real Estate Services.”

### **9-13 Instrument Date**

The Instrument Date is normally the date the instrument is signed by the (first) grantor(s). The following text appears above the grantor(s) signature(s): Dated this \_\_\_\_\_ day of \_\_\_\_\_.”

### **9-14 Execution**

#### **9-14.1 General**

- A. Each person appearing as or representing the grantor is requested to sign the instrument in his own hand, spelling out his name(s) and/or initial(s), as applicable, exactly as the name appears of record. The desired form or appearance for the signature is predetermined and is typewritten under the appropriate signature line before offering the instrument to the signatory for execution.
- B. The act of signing may be done before the qualified officer who is to certify an acknowledgment (see Section 9-15). The act of signing may be done elsewhere, but each person signing an instrument must personally appear before said qualified officer and acknowledge his own signature.
- C. Additional pages are appended (see Section 9-1.2.2.1B) or the custom instrument is continued (see Section 9-1.2.2.2) if necessary to provide space for all signatories.

#### **9-14.2 Individuals**

##### **9-14.2.1 Personally**

Where individuals are executing for themselves, the interest held or the relationships between such signatories is not stated at the signature blank.

##### **9-14.2.2 Signature by Mark**

A witness to a signature is desirable in the case of a sane person who, due to illiteracy, old age, or incapacitating illness, can sign only by using a mark. There is no legal requirement that a signature by mark be witnessed, but the use of witnesses offers great protection to the state

because of the agency relationship of the Acquisition Agent, who frequently also acts as the Notary Public.

- A. The signatory makes his mark before two witnesses, assisted if necessary by steadying the hand and pen in position. A witness must be capable of signing his own name.
- B. Any friends, relatives, doctors, nurses, business acquaintances, or other competent persons who know the signatory using his mark may act as witnesses. The Acquisition Agent or other parties in interest may not act as witnesses. Every effort should be made to provide witnesses to a signature by mark, or, in the alternative, to secure the services of a Notary Public who is not an employee of the state.
- C. A signatory who is not literate in the English language should have his signature witnessed and at least one of the witnesses should be able to act as an interpreter, unless the agent is himself literate in the language of the signatory.
- D. The witnesses sign the instrument as “witness” using a format similar to that in Figure 9-14.2.2.

S/ _____ Richard Roe, Witness	<u>His</u> _____ <u>Mark</u> _____ John Doe
S/ _____ Jack Smith, Witness	

**Signature by Mark With Witnesses (Example)**

*Figure 9-14.2.2*

**9-14.2.3 Fiduciary**

A person executing an instrument in the place of or on behalf of the party in interest does so, identifying his official and/or legal capacity at the signature blank on the instrument (see Figure 9-14.2.3). The language for identifying the signatory agrees with the language of the party clause.

<b>Execution Only as a Fiduciary</b>	<b>Execution, Individually <i>and</i> as a Fiduciary</b>
S/ <u>John Doe (written by the attorney in fact)</u>	<u>Jane Doe</u>
By: _____ Jane Doe, as his attorney in fact	S/ <u>John Doe (written by the attorney in fact)</u>
	By: _____ Jane Doe, as his attorney in fact
<u>Richard Roe, as trustee under the will of Joe Doe, deceased</u>	<u>Richard Roe</u>
	<u>Richard Roe, as trustee under the will of John Doe, deceased</u>
<u>Richard Roe, as trustee for John Doe</u>	<u>Richard Roe</u>
	<u>Richard Roe, as trustee for John Doe</u>
<u>Richard Roe, as (Executor/Personal Representative) for the estate of John Doe, deceased</u>	<u>Richard Roe</u>
	<u>Richard Roe, as (Executor/Personal Representative) for the estate of John Doe, deceased</u>
<u>Jane Doe, as guardian of the estate of John Doe Jr., a minor</u>	<u>Jane Doe</u>
	<u>Jane Doe, as guardian of the estate of John Doe, Jr., a minor</u>

**Execution By Fiduciaries (Example)***Figure 9-14.2.3*

### 9-14.3 Corporations

#### 9-14.3.1 Private Corporations

Ordinarily, the corporation's president and secretary are the officers who can execute conveyances for the corporation. Their names and titles are typed beneath their signatures (see Figure 9-14.3.1). An instrument from a private corporation may be accompanied by a resolution under certain conditions.

<p style="text-align: right;">ABLE BAKER CHARLIE COMPANY, INC.</p> <p style="text-align: right;">By: _____ John J. Doe, President</p> <p style="text-align: right;">By: _____ J. Paul Smith Jr., Secretary</p>
--

#### Corporate Signature Block (Example)

*Figure 9-14.3.1*

#### 9-14.3.2 Corporate Seal

Although it is not necessary to impress a corporate seal on an instrument, private corporations (that have seals) and governmental agencies may elect to do so.

#### 9-14.3.3 Local Public Bodies

Examples of signature blocks for local public bodies are given in Figure 9-14.3.3. An instrument from a local public body is accompanied by a Resolution.

#### 9-14.4 Partnerships

- A. If the PC shows title held in name of firm, which proves to be a partnership, modify corporate form (Figure 9-14.3.1) to show firm name and identity of signers as "Partner" if a general partner, or "Limited Partner" if such is the provable fact.
- B. If the PC shows title held by individuals, take signatures as prescribed in Section 9-14.1.

<b>Counties*</b>	
1. Commissioner System: _____  (SEAL) _____	_____ County  _____ John J. Doe, Chairman  _____ Mary E. Smith, Commissioner  _____ James J. Jones, Jr., Commissioner
Attest: _____ County Auditor and Clerk of the Board of County Commissioners	_____ _____ _____ _____
<b>Cities*</b>	
1. Mayor — Council (Commissioner) System: _____  (SEAL) _____	City of _____  _____ John J. Doe, Mayor  _____ Mary E. Smith, Councilman (Commissioner)  _____ Paul P. Peters, Councilman (Commissioner)
Attest: _____ City Clerk	_____ _____ _____ _____
2. Manager — Council System: _____  (SEAL) _____	City of _____  _____ John J. Doe, City Manager
Attest: _____ City Clerk	_____ _____ _____ _____
<b>Other Political Subdivisions*</b>	
Example: A School District: _____  Attest: _____ Clerk of the Board of Directors of School District No. _____ of _____ County, Washington	Board of Directors of _____ School District No. _____  _____ John J. Doe, Chairman  _____ Mary E. Smith,  _____ James J. Jones, Jr.

### Signature Blocks for Local Public Bodies (Examples)

*Figure 9-14.3.3*

## 9-15 Acknowledgment

### 9-15.1 General

- A. To render an instrument recordable and to permit its entry as evidence in a court of law without witnesses, a person signing an instrument must acknowledge before a qualified officer that the signature on the instrument is his signature and that he signed the instrument as his free and voluntary act and deed. The signature of the Governor of the state of Washington requires an attest by the Secretary of State.
- B. If the custom instrument (see Section 9-1.2.2.2) is continued, pages are appended as necessary (see Section 9-1.2.2.1B) to provide an acknowledgment for all signatories.
- C. A witness is not a party in interest and his signature is not acknowledged.
- D. A single acknowledgment may be used by the official for all interested parties who acknowledge their signature on an instrument on the same date, provided that the same acknowledgment language is otherwise applicable.

### 9-15.2 Rules

- A. A person acknowledging that a signature is his own, must appear before the qualified officer certifying to the fact and must be known by that officer, but the actual signing need not be in the presence of the certifying officer.
- B. The date of the acknowledgment must be the same as or later than the date of the instrument.
- C. The acknowledgment must state that the person who signed an instrument did so as his free and voluntary act and deed.
- D. The acknowledgment for a corporate grantor must state that the officers of the corporation who signed an instrument were authorized to do so and that the seal, if affixed to the instrument, is the corporate seal of the corporation.
- E. The qualified officer taking an acknowledgment must derive no personal profit as a result of the execution of the instrument.
- F. The acknowledgment must be taken within the territorial jurisdiction of the qualified officer.
- G. The acknowledgment must recite that a person acting in a fiduciary capacity is so doing.
- H. The acknowledgment of an attorney in fact must state that his principal is alive and sane and that the instrument was executed in behalf of said principal.
- I. If the qualified officer taking an acknowledgment is required to have a seal, said seal must not have expired and must be affixed to the acknowledgment. If the qualified officer taking an acknowledgment does not have a seal, a certificate of authority must be attached to the acknowledgment, except that no certificate of authority is required of officers of the U.S. Armed Forces or the U.S. Merchant Marine (see Sections 9-15.2K9 and 9-15.2K10).
- J. The signature of the grantor must be in the same form as it appears within the party clause and within the acknowledgment, unless it is a signature by mark.
- K. Officers qualified to take acknowledgments within the geographic area of their respective jurisdictions are as follows:
  - 1. A United States District Court Commissioner.
  - 2. A Judge, Clerk, or Deputy Clerk of the Supreme Court of the state of Washington.

3. A Judge, Court Commissioner, Clerk, or Deputy Clerk of a County Superior Court or a County Auditor or a Deputy County Auditor.
  4. A Notary Public in and for the state of Washington (see Section 3-9).
  5. Any person authorized to take acknowledgments according to the laws of any state other than the state of Washington, or of any territory, district, or possession of the United States wherein the acknowledgment is taken.
  6. A Notary Public, Judge, Clerk, or other proper officer of any court of a foreign country.
  7. The Mayor or other chief magistrate of any city, town, or municipal corporation in a foreign country.
  8. In a foreign country, any minister plenipotentiary, secretary of a legation, charge d'affairs, consul, vice-consul, consular agent or commercial agent appointed by the United States Government.
  9. Any officer of the United States Armed Forces having a rank equivalent to Second Lieutenant, or higher. An officer of the armed forces can take the acknowledgment only of a member of the armed forces. If the spouse of a member of the armed forces is a civilian, the acknowledgment of the signature of said spouse is taken by any other qualified officer.
  10. The Master or First Officer of a vessel of the United States Merchant Marine, only of a member of the U.S. Merchant Marine. The signature of a civilian spouse is handled as described in Section 9-15.2K9.
- L. Whenever an instrument is sent out of state for signature and acknowledgment, the proper acknowledgment form is attached, and the transmittal letter instructs the parties in interest that acknowledgment form must be used.

### **9-15.3 Format Examples**

Refer to Figure 9-15.3 for examples of acknowledgment formats.

## Individual Form

[illegible]

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_\_  
to me known to be the individual(s) described in and who executed the foregoing instrument, and  
acknowledged that     (he, she, they)     signed and sealed the same as     (his, her, their)     free  
and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

## Corporate Form

Delete parenthetical statement if no corporate seal or if same is not affixed.

STATE OF WASHINGTON )  
 : ss  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_\_  
to me known to be the (President, Secretary, Treasurer) of the corporation that executed the  
foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed  
of said corporation, for the uses and purposes therein mentioned, and on oath stated that (they  
are) authorized to execute said instrument (and that the seal affixed is the corporate seal of said  
corporation.)

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of  
Washington, residing at

My commission expires \_\_\_\_\_

**Samples of Acknowledgment Formats (Page 1 of 6 Pages)**  
*Figure 9-15.3*

## Attorney in Fact Form

STATE OF WASHINGTON           )  
County of \_\_\_\_\_ : ss  
\_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_ (name of attorney in fact) \_\_\_\_\_ to me known to be the individual who executed the foregoing instrument as attorney in fact of \_\_\_\_ (name of principal) \_\_\_\_\_ therein described, and acknowledge to me that \_\_\_\_ (he, she) \_\_\_\_\_ signed and sealed the said instrument as such attorney in fact for said principal, freely and voluntarily, and for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and that the said \_\_\_\_ (principal) \_\_\_\_\_ is now living and sane.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of  
Washington, residing at

My commission expires \_\_\_\_\_

## Self and Attorney in Fact Form

STATE OF WASHINGTON             )  
County of \_\_\_\_\_ : ss  
\_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_\_ (name of attorney in fact) \_\_\_\_\_ to me known to be the individual in and who executed the foregoing instrument for \_\_\_\_\_ (him, her) \_\_\_\_\_ self and as attorney in fact of \_\_\_\_\_ (name of principal) \_\_\_\_\_ also therein described, and acknowledged to me that \_\_\_\_\_ (he, she) \_\_\_\_\_ signed the same as \_\_\_\_\_ (his, her) \_\_\_\_\_ voluntary act and deed and as the free and voluntary act and deed of the said \_\_\_\_\_ (principal) \_\_\_\_\_ for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked and the said \_\_\_\_\_ (principal) \_\_\_\_\_ is now living and sane.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of  
Washington, residing at

My commission expires \_\_\_\_\_

### Samples of Acknowledgment Formats (Page 2 of 6 Pages)

**Figure 9-15.3**

# County Commissioners Form

STATE OF WASHINGTON )  
 )  
 ) ss  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_\_  
 \_\_\_\_\_ each one to me known to be one of the duly elected, qualified and acting County  
 Commissioners of \_\_\_\_\_ County, Washington, that executed the within and foregoing  
 instrument and acknowledged said instrument to be the free and voluntary act and deed of said  
 County, for the uses and purposes therein mentioned, and each on oath stated that he (she) was  
 authorized to execute said instrument by resolution of the Board of County Commissioners of said  
 County, and that the seal affixed is the official seal of said County.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of  
Washington, residing at

My commission expires \_\_\_\_\_

## School District Form

STATE OF WASHINGTON )  
 : ss  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ to me known to be the duly executed qualified  
and acting (President and Secretary) (if a first class district)\* (Chairman and Clerk) (if a second  
or third class district)\* of the Board of Directors of School District No. \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ County, Washington, that executed the within and foregoing instrument and acknowledged  
said instrument to be the free and voluntary act and deed of said School District for the uses  
and purposes therein mentioned and each on oath stated that he was authorized to execute said  
instrument by resolution of the Board of Directors of said School District and that the seal affixed  
is the official seal of said School District.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

Notary Public in and for the State of  
Washington, residing at

My commission expires \_\_\_\_\_

\*Omit from test on preparation.

**Samples of Acknowledgment Formats (Page 4 of 6 Pages)**  
*Figure 9-15.3*

Page 9-69

**Trustee Form\***

STATE OF WASHINGTON \_\_\_\_\_ )  
 \_\_\_\_\_ : ss  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared \_\_\_\_\_,  
 as Trustee(s) of the \_\_\_\_\_ Trust, to me known to be the individual(s) described in and who  
 executed the foregoing instrument, and acknowledge that (he, she) signed the same as (his, her) free  
 and voluntary act and in the capacity and for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

\_\_\_\_\_  
 Notary Public in and for the State of  
 Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**Limited Liability Company Form\***

STATE OF WASHINGTON \_\_\_\_\_ )  
 \_\_\_\_\_ : ss  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared \_\_\_\_\_  
 \_\_\_\_\_ and \_\_\_\_\_ to me known to be the  
 of L.L.C., a Washington Limited Liability Company that executed the foregoing instrument, and  
 acknowledged said instrument to be the free and voluntary act and deed of said Limited Liability  
 Company, for the uses and purposes therein mentioned, and on oath stated that are authorized to  
 execute said instrument.

(SEAL)

\_\_\_\_\_  
 Notary Public in and for the State of  
 Washington, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

**Samples of Acknowledgment Formats (Page 6 of 6 Pages)**  
*Figure 9-15.3*

## 9-16 Recording Block

- A. In the space below the word “From” or the word “Between,” insert the name of the first grantor as it is shown in the party clause of the instrument. If the grantor’s spouse joins in the instrument, add “et ux.” or “et vir.” as appropriate. If the grantor is one of number of grantors, add “et al.” In the blank below the word “In,” insert the appropriate county.
- B. At the bottom of the block the Project Title used in the heading of the instrument (see Section 9-5) is entered, followed by the Parcel Number.
- C. The rectangular space between the above two mentioned entries is reserved for the County Auditor to enter the recording date and other recording information.
- D. The left-hand margin of the instrument, adjacent to the top line of the recording block, is reserved for the entry of the headquarters permanent instrument file reference numbers.

## 9-17 Attachments/Corollary Documents

### 9-17.1 General

- A. Items which may be appended to an instrument are referenced within the body of such instrument. As an appendage, the item is given and referenced to by an “EXHIBIT” identification letter.
- B. A document such as an affidavit may be required to answer questions of grantors’ identity, status, interest, etc. Such a document is seldom appended to the principal instrument but is, instead, a corollary document and is not referenced in the instrument.

### 9-17.2 Rules

- A. Attachments to an instrument are verbally bound to such instrument by appropriate language within the instrument at the point the attachment is first mentioned (see Section 9-17.4).
- B. Attachments to an instrument are marked EXHIBIT “A,” EXHIBIT “B,” etc., in the order in which reference is made to each in the instrument.
- C. There is no relationship required between the identifying letter of an exhibit and other identifications within the instrument, e.g., Parcel “A” does not need to be EXHIBIT “A” (if the length of the Parcel A description requires attachment as an exhibit) but it does help eliminate confusion.
- D. The word “EXHIBIT” followed by its sequential exhibit identification letter (“A,” “B,” etc.,) is inserted in the lower right-hand corner of each page of each exhibit above the Parcel Number.
- E. Any document, though it may have a bearing on an instrument, is a corollary document unless made an attachment (EXHIBIT) as specified in A, above.
- F. All attachments (appendages, exhibits, etc.) to an instrument are prepared and attached prior to execution of the instrument.

### 9-17.3 Affidavit

- A. Whether used as an attachment or as a corollary document, an affidavit has one general form as shown in Figure 9-17.3.
- B. An affiant is an individual person (not a corporation) who, under potential penalty of perjury, elects to swear and affirm to any fact or facts or combinations thereof.

<b>Affidavit</b>	
STATE OF WASHINGTON    )	
County of _____ )	: ss
_____, being first duly sworn on oath deposes and says:	
(E.g., “That ( <u>he</u> , <u>she</u> ) was a single (man, woman) on <u>  (date)  </u> , date of acquiring title to the property conveyed by that deed recorded <u>  (date)  </u> under Auditor’s File No. _____, and has remained a single (man, woman) at all times since.”)	
(affidavit)	
Subscribed and sworn to before me this _____ day of _____.	
_____ Notary Public in and for the State of Washington, residing at _____ My commission expires _____	

**Affidavit (Sample)**  
*Figure 9-17.3*

## 9-17.4 Exhibits

### 9-17.4.1 Parcel Descriptions

- A. The legal description is an acceptable attachment in accordance with Section 9-9.13.
- B. The exhibit is verbally bound to the instrument by inserting (in the instrument at the location at which the parcel description would otherwise appear) language such as the following: “See EXHIBIT “A” attached hereto and by this reference made a part hereof.”

### 9-17.4.2 Exhibit Maps

- A. State *Right of Way* or *Sundry Site* plans are acceptable.
- B. Reduced copies of the right of way map sheets are acceptable, provided the map details are not made illegible by the reduction and/or reproduction. Exhibits must meet the state recording statute.
- C. Each map sheet reproduction is identified above the title block by the “EXHIBIT” identification letter given to it within the instrument. The map sheet numbering, even though some of the map sheets may not be used, is sufficient for page numbering of a multiple-page exhibit.
- D. The exhibit maps are prepared by showing the areas to be conveyed as hachured.

- E. If more than one type of interest is to be conveyed, the exhibit maps are color-coded using the following color codes:
  - 1. The areas to be conveyed in fee simple are shaded red.
  - 2. The areas to be conveyed as easements are shaded blue.
  - 3. The areas covered by permits are shaded green.
- F. The uses to which an easement or permit are to be put, limited access hachures and other essential details, including a legend, are on each right of way map sheet and do not require special coloring.
- G. In place of the acquisition description on the face of the instrument, the exhibit is verbally bound to such instrument by use of language selected and adapted from the following:
  - 1. “. . . That area hachured on EXHIBIT ‘A’ attached hereto and by this reference made a part hereof.”
  - 2. “. . . That area conveyed in fee simple herein shaded in red color, that area conveyed as an easement herein shaded in blue color and that area granted as a permit herein shaded in green color on EXHIBIT ‘A’ attached hereto and by this reference made a part hereof.”

### **9-17.5 Resolutions**

An instrument from a governmental agency or corporation (in some cases) is accompanied by a Resolution which authorizes execution of the instrument (see Sections 6-5.1.1A3 and 6-5.1.1B).

### **9-18 Acceptance and Approval**

- A. After completion of review and verification that the title and/or interest required by the state is adequately described and suitably clear to the state, the Secretary of Transportation (or his designee) dates and executes each instrument which is contingent upon such acceptance and approval.
- B. Instruments not contingent upon acceptance and approval by the Secretary are any instrument or document which:
  - 1. Does not directly or indirectly commit the state to a monetary or other financial obligation.
  - 2. Does not encumber property under the ownership or control of the state.
  - 3. Will become binding upon the state only upon the acceptance and approval of another instrument.

